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PTO/SB/65 (10-05)

Approved for use through 04/30/2009. OMB 0651-0018
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Quickie-001-PT

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. 6,066,160 Application Number 09/198,087
Issue Date May 23, 2000 Filing Date November 23, 1998

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above-identified patent:

- ☐ Is a reissue of original Patent No. _____ original issue date _____ ;
original application number _____ ,
original filing date _____ .
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international
application _____ filed on _____ .

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is
(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR
(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

Signature

10/30/2006 SLUANG1 00000001 6066160

01 FC:1599

1600.00 OP

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

BEST AVAILABLE COPY



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

| NOT Small Entity | | | Small Entity | | |
|---|---------------|--------|-----------------------------------|---------------|--------|
| Amount | Fee | (Code) | Amount | Fee | (Code) |
| <input checked="" type="checkbox"/> \$ 900.00 | 3 1/2 yr fee | (1551) | <input type="checkbox"/> \$ _____ | 3 1/2 yr fee | (2551) |
| <input type="checkbox"/> \$ _____ | 7 1/2 yr fee | (1552) | <input type="checkbox"/> \$ _____ | 7 1/2 yr fee | (2552) |
| <input type="checkbox"/> \$ _____ | 11 1/2 yr fee | (1553) | <input type="checkbox"/> \$ _____ | 11 1/2 yr fee | (2553) |

MAINTENANCE FEE BEING SUBMITTED \$ _____

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

☐ Enclosed is a check for the sum of \$ _____

☐ Please charge Deposit Account No. _____ the sum of \$ _____. A duplicate copy of this authorization is attached.

☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____. A duplicate copy of this authorization is attached.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made please

☒ Credit to Deposit Account No. _____

OR

☐ Send refund check.

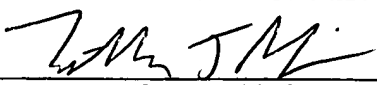
WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

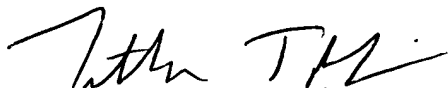
| | |
|---|--|
|  _____ Signature(s) of Petitioner(s) | <u>10/27/06</u> _____ Date |
| <u>Timothy J. Maier</u> _____ Typed or printed name(s) | <u>51,986</u> _____ Registration Number, if applicable |
| <u>128 N. P.H. St. 2ND Floor</u> _____ Address | <u>703 740-8322</u> _____ Telephone Number |
| <u>Alexandria, VA 22314</u> _____ Address | |

ENCLOSURES:

- ☒ Maintenance Fee payment
- ☒ Statement why maintenance fee was not paid timely
- ☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
- ☐ Other:

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37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Signature

10/27/06

Date

Timothy J. Maier

Typed or printed name

51,986

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See Attached.

(Please attach additional sheets if additional space is needed)



PATENT
Customer No.62008
Attorney Docket No. QUICKIE-001-PT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:)
)
Colvin et al.) Group Art Unit: NA
)
US Patent No.: 6,066,160) Examiner: Gary Jackson
)
Issue Date: May 23, 2000)
)
For: Passive knotless suture terminator)
for use in minimally invasive surgery and)
to facilitate standard tissue securing)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

GRANT OF LIMITED POWER OF ATTORNEY

TO FILE 37 C.F.R. 378(C) PETITION

The undersigned representative of Quickie, LLC, owner by virtue of assignment of the above-identified application, hereby grants limited power of attorney in the above action to Maier & Maier, PLLC., Customer Number 62,008; Timothy J. Maier, Reg. No. 51,986; Christopher J. Maier, Reg. No. 53,255; both jointly and separately as their attorneys with full power of substitution and revocation to file and prosecute this, the above-reference petition, in the Patent and Trademark Office.

Please send all future correspondence concerning this Petition to Maier & Maier,
PLLC at the following address:

Maier & Maier, PLLC
128 N. Pitt St.
2nd Floor
Alexandria, VA 22314

The undersigned is empowered with limited Power of Attorney on
behalf of the assignee.

Dated: 10/25/06

Title: Mary Patton

Quickie, LLC

By: Aubrey Galloway M.D.

Aubrey C. Galloway, MD

STATEMENT UNDER 37 CFR 3.73(b)Applicant/Patent Owner: Stephen Colvin, Eugene Grossi, Allan Katz, Paul OddoApplicant No./Patent No.: 6066160 Filed/Issue Date: 05/23/2000

Entitled:

Quickie, LLC, a limited liability company
 (Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest
 (The extent (by percentage) of its ownership interest is _____ %)

in the patent application/patent identified above by virtue of either:

A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 9608, Frame 0640, or for which a copy thereof is attached.

OR

B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: _____ To: _____
 The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.
2. From: _____ To: _____
 The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.
3. From: _____ To: _____
 The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Timothy J. Maier
 Signature

10/23/2006

Date

Timothy J. Maier, Registered Patent Attorney(703) 740-8322

Printed or Typed Name

Telephone Number

Principal of Maier & Maier, PLLC

Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Assignments on the Web > **Patent Query**

Patent Assignment Abstract of Title

NOTE: Results display only for issued patents and published applications. For pending or abandoned applications please consult USPTO staff.

Total Assignments: 1

Patent #: 6066160

Issue Dt: 05/23/2000

Application #: 09198087

Filing Dt: 11/23/1998

Inventors: STEPHEN COLVIN, EUGENE GROSSI, ALLAN KATZ

Title: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINAMALLY INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING

Assignment: 1

Reel/Frame: 009608/0640

Recorded: 11/23/1998

Pages: 5

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignors: COLVIN, STEPHEN

Exec Dt: 11/17/1998

GROSSI, EUGENE

Exec Dt: 11/17/1998

KATZ, ALLAN

Exec Dt: 11/17/1998

ODDO, PAUL

Exec Dt: 11/17/1998

Assignee: QUICKIE, LLC

ATTN: ALAN FELL

3 NEW YORK PLAZA

NEW YORK, NEW YORK 10004

Correspondent: PEPE & HAZARD LLP

TODD S. SHARINN

GOODWIN SQUARE

225 ASYLUM STREET

HARTFORD, CT 06103

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Web interface last modified: July 26, 2006 v.1.10

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1-31-92

OCT 27 2006

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12-02-1998

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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of Patents:

1. Name of conveying party(ies):

Stephen Colvin
Eugene Grossi
Allan Katz
Paul OddoAdditional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other

Execution Date: November 17, 1998

100910470

d original documents or copy thereof.

Name and address of receiving party(ies):

Name: QUICKIE, LLC

Street Address: 3 New York Plaza Attn: Alan Fell

City: New York State: NY ZIP: 10004

Country: United States

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: November 17, 1998

A. Patent Application No.(s)

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning documents should be mailed:

Name: Todd S. Sharinn

Pepe & Hazard LLP

Goodwin Square

Street Address: 225 Asylum Street

City: Hartford State: CT ZIP: 06103

6. Total number of applications and patents involved:

7. Total fee (37 CFR 3.41) \$40.00

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

03-3355

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Todd S. Sharinn

Signature

11/23/98

Date

Total number of pages comprising cover sheet: 5

12/01/1998 MAILED 00000175 09190007

01 FC-501

40.00 DP

OMB No. 0721-0011 (exp. 4/94)

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Washington, D.C. 20231PATENT
REEL: 9608 FRAME: 0640

A S S I G N M E N T

FOR GOOD AND VALUABLE CONSIDERATION, We, STEPHEN COLVIN, EUGENE GROSSI, ALLAN KATZ, and PAUL ODDO, of New York in the State of New York, New York in the State of New York, Freeport in the State of New York, and Freeport in the State of New York; respectively, do hereby sell, assign and transfer unto

QUICKIE, LLC

a company organized under the laws of the State of New York, and having an office at 3 New York Plaza, Attn: Alan Fell, New York, New York 10004, herein sometimes called "Assignee", the entire right, title and interest in and to our invention for the Improvement in a

PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE
IN MINIMALLY INVASIVE SURGERY AND TO
FACILITATE STANDARD TISSUE SECURING

as described and/or claimed in our application for Letters Patent of the United States of America, executed concurrently herewith, in and for the United States and all foreign countries, the same to be held and enjoyed by Assignee, its successors, assigns or other legal representatives, to the full ends of the terms for which all Letters Patent therefor may be granted.

AND WE HEREBY AUTHORIZE Assignee to make application for and to receive Letters Patent for said invention in any of said countries in its own name, or in our name, at its election.

AND WE HEREBY COVENANT AND AGREE that we will execute or procure any further necessary assurance of the title to said invention and any Letters Patent which may issue therefor and that we will, at any time, upon the request and at the expense of Assignee execute and deliver any testimony in any legal proceedings and all papers that may be necessary or desirable to perfect the title to said invention or any Letters Patent which may be granted therefor in Assignee, its successors, assigns or other legal representatives, and that we will, at any time, upon the request and at the expense of Assignee execute any additional or divisional applications for patents for said invention, or any part or parts thereof, and for the issue of any Letters Patent to be granted thereon and will make all rightful oaths, and do all lawful acts requisite for procuring the same therein, without further compensation, but at the expense of Assignee, its successors, assigns or other legal representatives.

AND WE HEREBY AUTHORIZE AND REQUEST the Commissioner of Patents and Trademarks to issue any and all Letters Patent of the United States for said invention or resulting from said application or any division or continuation thereof, to said QUICKIE, LLC as sole Assignee.

WITNESS our hands and seals this 17th day of NOVEMBER, 1998.



STEPHEN COLVIN

EUGENE GROSSI

ALLAN KATZ

PAUL ODDO

A C K N O W L E D G M E N T

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) SS:

On this 17th day of NOVEMBER, 1998, personally appeared before me STEPHEN COLVIN to me known, and known by me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same, of his own free will and for the purposes set forth.

Joseph T. Minutello
Notary Public

JOSEPH T. MINUTELLO
Notary Public, State of New York
No. 4898563
Qualified in New York County
Commission Expires 8/20/99

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) SS:

On this 17th day of NOVEMBER, 1998, personally appeared before me EUGENE GROSSI to me known, and known by me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same, of his own free will and for the purposes set forth.

Joseph T. Minutello
Notary Public

JOSEPH T. MINUTELLO
Notary Public, State of New York
No. 4898563
Qualified in New York County
Commission Expires 8/20/99

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) SS:

On this 17th day of NOVEMBER, 1998, personally appeared before me ALLAN KATZ to me known, and known by me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same, of his own free will and for the purposes set forth.

Joseph T. Minutello
Notary Public

JOSEPH T. MINUTELLO
Notary Public, State of New York
No. 4898563
Qualified in New York County
Commission Expires 8/20/99

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On this 17th day of NOVEMBER, 1998, personally appeared before me PAUL ODDO to me known, and known by me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same, of his own free will and for the purposes set forth.

Joseph T. Minutello
Notary Public

JOSEPH T. MINUTELLO
Notary Public, State of New York
No. 4898569
Qualified in New York County
Commission Expires 8/20/99

JER/29620/1/299254.1
11/13/98-MAZ/H1

RECORDED: 11/23/1998

PATENT
REEL: 9608 FRAME: 0644



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Colvin *et al.*

Appl. No. 09/198,087

For: **Passive Knotless Suture
Terminator For Use in Minimally
Invasive Surgery and to Facilitate
Standard Tissue Securing**

U.S. Patent No.: 6,066,160

Owner: Quickie L.L.C.

Filed: November 23, 1998

Issued: May 23, 2000

Art Unit: 3731

**Petition Under 37 C.F.R. § 1.378(c)
Statement of Unavoidable Delay**

Commissioner for Patents
Office of Petitions
PO Box 1450
Alexandria, VA 22313-1450

Sir:

The above-referenced patent expired for delayed payment of the first maintenance fee.

This Petition is filed to show to the satisfaction of the Commissioner that the delay in payment of the first maintenance fee has been unavoidable to the Patent Owner.

The attention of the Office of Petitions is directed to the following and to "Chronolog/Time-Line" (Exhibit 2), and the other Exhibits for a showing of facts and diligence.

Our intent is to show that reasonable and due care was taken by the Patent Owner to ensure timely payment of the first maintenance fee.

Patent Owner and his Counsel continue to meet their duty of diligence from the initial discovery of patent expiration to this filing, explained hereinafter.

We respectfully submit that the Patent Owner has been precluded from an opportunity to timely pay the requisite maintenance fee, even though reasonable due care was taken to insure timely payment. Thus, the delay was unavoidable and the patent should be reinstated when the requisite showing is made.

We submit herewith evidence clearly showing that the subject Patent property was and is a very important asset of the Patent Owner, even before its application was filed and continually to the present time starting with: the "Medtronic Agreement" dated November 5, 1998 (Exhibit 4); and including litigations filed in 2002 against Medtronic (Exhibit 5); and two (2) Reexamination Proceedings numbers 90/006460 and 90/007085 (See Exhibit 11).

The Patent Owner never intended to not pay any requisite maintenance fee and endanger the conduct of the litigation proceeding or any USPTO Reexamination Proceeding.

Patent Owner never received any notification concerning: payment of the first maintenance fee; or, need to file a petition under 37 C.F.R. 1.378 to reinstate the '160 Patent during the unintentional two-year period. In fact, Patent Owner first learned that the '160 Patent had expired on July 23, 2006 via an e-mail from Michael J. Girald, Senior Director of Research and Development at St. Jude Medical, Inc., as Patent Owner was negotiating with him.


On July 24, 2006, Patent Owner forwarded Mr. Girald's e-mail to Patent Owner's general business attorney, Mr. Allen Fell, Esq. who shortly thereafter, circa August 2, 2006, acquired Patent Counsel to fully investigate the expiration.

The Patent Owner and his Counsel are still most actively investigating all parties of concern and have requested needed information to complete this Petition. (See

Exhibit 12). We will continue diligently to obtain the information we have requested from these parties and firms. Once received, this information will be promptly filed as a supplement to the present petition.

Counsel for Patent Owner is aware of the position of the Commissioner of the USPTO and its Office of Petitions to not contact parties who have been reluctant to provide information requested by patent owners and their counsel as petitioners to the USPTO. Accordingly, robust efforts will be made to acquire the information that has been requested, and to comply with our duty of diligence.

Respectfully submitted,
MAIER & MAIER, PLLC



Timothy J. Maier
Reg. 51,986

Date: October 26, 2006

c/o Timothy J. Maier, Esq.
Maier & Maier, PLLC
128 N. Pitt St., Second Floor
Alexandria, VA 22314 USA
(703) 740 – 8322 x101



EXHIBIT LIST

1. ASSIGNMENT AND COPY OF US PATENT 6,066,160.
2. TIMELINE
3. EXIHIBIT FOR '160 PATENT POWER OF ATTORNEY AND CORRESPONDENCE ADDRESS CHANGES OF RECORD IN USPTO
4. MEDTRONIC AGREEMENT 11/5/98
5. LITIGATION 2/13/02
6. PEPE & HAZARD FACTS
7. TODD SHARRIN FACTS
8. GREENBURG TRAUIG LLP FACTS
9. DECLARATION OF AUBREY GALLOWAY
10. THELEN REID & PRIEST FACTS
11. 1st REEXAMINATION PROCEEDING No. 90/006460 |
2nd REEXAMINATION PROCEEDING No. 90/007085 |> Merged
12. COUNSEL'S INQUIRIES TO VARIOUS PARTIES



EXHIBIT 1



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ATTN: ALAN FELL

3 NEW YORK PLAZA

NEW YORK, NEW YORK 10004

Correspondent: PEPE & HAZARD LLP

TODD S. SHARINN

GOODWIN SQUARE

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12-02-1998

EET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

11-23-98

To the Honorable Commissioner of Patents:

100910470

d original documents or copy thereof.

1. Name of conveying party(ies):

Stephen Colvin
Eugene Grossi
Allan Katz
Paul OddoAdditional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other

Execution Date: November 17, 1998

(State and address of receiving party(ies):

Name: QUICKIE, LLC

Street Address: 3 New York Plaza Attn: Alan Fell

City: New York State: NY ZIP: 10004

Country: United States

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: November 17, 1998

A. Patent Application No.(s)

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning documents should be mailed:

Name: Todd S. Sharinn

Pepe & Hazard LLP

Goodwin Square

Street Address: 225 Asylum Street

City: Hartford State: CT ZIP: 06103

6. Total number of applications and patents involved:.....

7. Total fee (37 CFR 3.41)..... \$40.00

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

03-3355

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9. Statement and signature.

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Todd S. Sharinn

11/23/98

Signature

Date

Total number of pages comprising cover sheet: 5

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01 FC-501

40.00 EP

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REEL: 9608 FRAME: 0640

A S S I G N M E N T

FOR GOOD AND VALUABLE CONSIDERATION, We, STEPHEN COLVIN, EUGENE GROSSI, ALLAN KATZ, and PAUL ODDO, of New York in the State of New York, New York in the State of New York, Freeport in the State of New York, and Freeport in the State of New York; respectively, do hereby sell, assign and transfer unto

QUICKIE, LLC

a company organized under the laws of the State of New York, and having an office at 3 New York Plaza, Attn: Alan Fell, New York, New York 10004, herein sometimes called "Assignee", the entire right, title and interest in and to our invention for the Improvement in a

PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE
IN MINIMALLY INVASIVE SURGERY AND TO
FACILITATE STANDARD TISSUE SECURING

as described and/or claimed in our application for Letters Patent of the United States of America, executed concurrently herewith, in and for the United States and all foreign countries, the same to be held and enjoyed by Assignee, its successors, assigns or other legal representatives, to the full ends of the terms for which all Letters Patent therefor may be granted.

AND WE HEREBY AUTHORIZE Assignee to make application for and to receive Letters Patent for said invention in any of said countries in its own name, or in our name, at its election.

AND WE HEREBY COVENANT AND AGREE that we will execute or procure any further necessary assurance of the title to said invention and any Letters Patent which may issue therefor and that we will, at any time, upon the request and at the expense of Assignee execute and deliver any testimony in any legal proceedings and all papers that may be necessary or desirable to perfect the title to said invention or any Letters Patent which may be granted therefor in Assignee, its successors, assigns or other legal representatives, and that we will, at any time, upon the request and at the expense of Assignee execute any additional or divisional applications for patents for said invention, or any part or parts thereof, and for the issue of any Letters Patent to be granted thereon and will make all rightful oaths, and do all lawful acts requisite for procuring the same therein, without further compensation, but at the expense of Assignee, its successors, assigns or other legal representatives.

AND WE HEREBY AUTHORIZE AND REQUEST the Commissioner of Patents and Trademarks to issue any and all Letters Patent of the United States for said invention or resulting from said application or any division or continuation thereof, to said QUICKIE, LLC as sole Assignee.

WITNESS our hands and seals this 17th day of NOVEMBER, 1998.



STEPHEN COLVIN

EUGENE GROSSI

ALLAN KATZ

PAUL ODDO

A C K N O W L E D G M E N T

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

On this 17th day of NOVEMBER, 1998, personally appeared before me STEPHEN COLVIN to me known, and known by me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same, of his own free will and for the purposes set forth.

Joseph T. Minutello
Notary Public

JOSEPH T. MINUTELLO
Notary Public, State of New York
No. 4898568
Qualified in New York County
Commission Expires 8/20/99

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

On this 17th day of NOVEMBER, 1998, personally appeared before me EUGENE GROSSI to me known, and known by me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same, of his own free will and for the purposes set forth.

Joseph T. Minutello
Notary Public

JOSEPH T. MINUTELLO
Notary Public, State of New York
No. 4898568
Qualified in New York County
Commission Expires 8/20/99

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

On this 17th day of NOVEMBER, 1998, personally appeared before me ALLAN KATZ to me known, and known by me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same, of his own free will and for the purposes set forth.

Joseph T. Minutello
Notary Public

JOSEPH T. MINUTELLO
Notary Public, State of New York
No. 4898568
Qualified in New York County
Commission Expires 8/20/99

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On this 17th day of NOVEMBER, 1998, personally appeared before me PAUL ODDO to me known, and known by me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same, of his own free will and for the purposes set forth.

Joseph T. Minutello
Notary Public

JOSEPH T. MINUTELLO
Notary Public, State of New York
No. 4898669
Qualified in New York County
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JRF/29620/1/299254.1
11/13/98-MAZ/H1

RECORDED: 11/23/1998

PATENT
REEL: 9608 FRAME: 0644

EXHIBIT 2

CHRONOLOG / TIME-LINE

| <u>Date</u> | <u>Fact(s)</u> |
|-------------|---|
| May 1998 | Quickie, L.L.C., owner of inventions of USPN 6066160 retains firm of Pepe & Hazard, L.L.P. to prepare and prosecute patent application. |
| 11-5-1998 | Medtronic Agreement. |
| 11-23-1998 | Application of '160 patent filed by Pepe & Hazard, retained also to prosecute before USPTO. |
| 5-23-2000 | '160 application <u>issued</u> as USPN 6066160. |
| 5-4-2001 | Pepe & Hazard's letter notifying Patent Owner c/o Alan Fell, Esq. (General Counsel) that Todd Sharinn, Esq., their in-house attorney who worked on the Quickie Account, would soon leave Pepe & Hazard to start his own firm and raised the question of responsibility for Quickie's files. |
| 5-21-2001 | Pepe & Hazard's letter to Todd Sharinn listing the files transferred to him, including subject '160 patent. |
| _____ | To date, no response from Todd Sharinn, we will add facts as to Todd Sharinn's as they become available. |
| _____ | Greenberg Traurig, L.L.P. See GT Exhibit. |
| _____ | Date Patent Owner's files transferred to Greenberg Traurig. |
| 10-2-2002 | Litigation filed: Quickie, L.L.C. v. Medtronic, Inc., 02 CIV1157(GEL) U.S.D.C., S.D.N.Y. (Pending). |
| 11-25-2002 | Greenberg Traurig filed a first reexamination request (no. 90/006460) for the '160 patent and undertook prosecution of it ('160 still in force). |
| 3-4-2003 | Power of Attorney to Robert E. Krebs <i>et al.</i> , "Revocation of Prior Power of Attorney" – "all powers of attorney previously given are hereby revoked." |
| 12-2-2003 | Attorney Robert E. Krebs and Thelen, Reid & Priest, L.L.P. directed the USPTO to address "all further communications" regarding the application of patent 6,066,160 to them. |

5-23-2004 Last date to timely pay first maintenance fee.

5-24-2004 **'160 Patent Expired**

6-16-2004 Thelen Reid & Priest filed a 2nd reexamination request (no. 90/007085) for the '160 patent and undertook prosecution of it until 7-11-06 (**The two-year window for timely filing a 37 CFR 1.378 unintentional petition commenced 5-24-2004 and expired 5-24-2006**).

7-23-2006 Patent Owner first learned/told that the '160 Patent had expired, via an e-mail from Michael J. Girald, Senior Director of Research and Development at St. Jude Medical, Inc., as Patent Owner was negotiating with him.

7-24-2006 Patent Owner forwarded Mr. Girald's e-mail to Patent Owner's general business attorney, Mr. Allen Fell, Esq. who shortly thereafter, circa August 2, 2006, acquired Patent Counsel to fully investigate the expiration.

EXHIBIT 3

Patent eBusiness



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09/198,087 PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINAMALLY INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING

| Application Data | Transaction History | Image File Wrapper | Continuity Data | Published Documents | Fees | Address & Attorney/Agent |
|------------------|---------------------|--------------------|-----------------|---------------------|------|--------------------------|
|------------------|---------------------|--------------------|-----------------|---------------------|------|--------------------------|

Attorney/Agent Correspondence Information**Correspondence Address**

Name: Robert E. Krebs
Thelen Reid & Priest LLP
P. O. Box 640640
Address: San Jose CA 95164-0640
UNITED STATES (US)

Attorney/Agent Information

| Reg # | Name | Phone |
|-------|---------------|--------------|
| 42144 | Sharinn, Todd | 212-891-3790 |

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|------------------|---------------------|--------------------|-----------------|---------------------|------|--------------------------|
| Application Data | Transaction History | Image File Wrapper | Continuity Data | Published Documents | Fees | Address & Attorney/Agent |
|------------------|---------------------|--------------------|-----------------|---------------------|------|--------------------------|

Transaction History

| Date | Transaction Description |
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| 06-07-2004 | Correspondence Address Change |
| 04-02-2003 | Correspondence Address Change |
| 04-02-2003 | Change in Power of Attorney (May Include Associate POA) |
| 12-17-2002 | Correspondence Address Change |
| 11-06-2002 | Correspondence Address Change |
| 12-10-1999 | Workflow - File Sent to Contractor |
| 05-23-2000 | Recordation of Patent Grant Mailed |
| 05-11-2000 | Issue Notification Mailed |
| 01-06-2000 | Issue Fee Payment Verified |
| 04-28-2000 | Workflow - Complete WF Records for Drawings |
| 12-17-1999 | Workflow - Drawings Finished |
| 12-17-1999 | Workflow - Drawings Matched with File at Contractor |
| 01-23-2000 | Application Is Considered Ready for Issue |
| 12-17-1999 | Workflow - Drawings Received at Contractor |
| 12-17-1999 | Workflow - Drawings Sent to Contractor |
| 10-26-1999 | Mail Notice of Allowance |
| 10-26-1999 | Notice of Allowance Data Verification Completed |
| 10-12-1999 | Date Forwarded to Examiner |
| 08-18-1999 | Response after Non-Final Action |
| 07-22-1999 | Mail Non-Final Rejection |
| 07-19-1999 | Non-Final Rejection |
| 11-23-1998 | Information Disclosure Statement (IDS) Filed |
| 01-26-1999 | Case Docketed to Examiner in GAU |
| 12-30-1998 | Application Dispatched from OIPE |
| 12-09-1998 | IFW Scan & PACR Auto Security Review |
| 11-27-1998 | Initial Exam Team nn |

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

CONTROL NO.: 90/006,460

PATENT NO.: 6,066,160

FILING DATE: November 25, 2002

TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN
MINIMALLY INVASIVE SURGERY AND TO FACILITATE
STANDARD TISSUE SECURING

EXAMINER: Woo, J.

ART UNIT: 3731

Commissioner for Patents

POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST
(REVOCATION OF PRIOR POWERS)

REVOCATION OF PRIOR POWERS OF ATTORNEY

all powers of attorney previously given are hereby revoked and

NEW POWER OF ATTORNEY

the following attorney(s) and/or agent(s) are hereby appointed to prosecute and
transact all business in the Patent and Trademark Office connected therewith.

Robert E. Krebs, Registration No. 25,885; David B. Ritchie, Registration No. 31,562; Marc S. Hanish, Registration
No. 42,626; John P. Schaub, Registration No. 42,125; Adrienne Yeung, Registration No. 44,000; Steven J.
Robbins, Registration No. 40,299; Thierry K. Lo, Registration No. 49,097; William Samuel Niece, Registration No.
47,824; J. Davis Gilmer, Registration No. 44,711; William E. Winters, Registration No. 42,232; Masako Ando, (37
C.F.R. §10.9 (b)); and John Klaas Uilkema, Registration No. 20,282; Becky L. Troutman, Registration No. 36,703;
Hal J. Bohner, Registration No. 27,856;

Quickie, LLC

(type or print identity of assignee of entire interest)

3 New York Plaza
Attn: Alan Fell
New York, NY 10004

Address

Recorded in PTO on 11/23/1998

Reel 9608

Frame 0640

ASSIGNEE STATEMENT

The undersigned states that he is authorized to act on behalf of the assignee.

Date 3/4/03

Aubrey C. Gallouay
Signature

Aubrey C. Gallouay
(type or print name of person authorized to sign
on behalf of assignee)

Managing Partner
Title

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

CONTROL NO.: 90/006,460

PATENT NO.: 6,066,160

FILING DATE: November 25, 2002

TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN
MINIMALLY INVASIVE SURGERY AND TO FACILITATE
STANDARD TISSUE SECURING

EXAMINER: Woo, J.

ART UNIT: 3731

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Date: 12/5/03

Name:

Annette Valdivia

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

CHANGE OF ATTORNEY DOCKET NUMBER
AND CHANGE OF ADDRESS NOTICE

Please change the Attorney Docket No. for this patent application to 034521-003.

Please address all further communications regarding this application to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Telephone (408) 292-5800; Facsimile (408) 287-8040

Dated:

12/2/03

Respectfully submitted,

THELEN REID & PRIEST LLP

Robert E. Krebs

Reg. No. 25,885

Thelen Reid & Priest LLP
Attorneys At Law

225 West Santa Clara Street, Suite 1200
San Jose, CA 95113-1723
Tel. 408.292.5800
Fax 408.287.8040
www.thelenreid.com

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Date: December 5, 2003

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From: Annette Valdivia

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Phone: 408/282-1818
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Date: 12/5/03

Signature:

Annette Valdivia

RE: Control No. 90/006,460
Filed: November 25, 2002
Docket No: 034521-003

Dear Sir or Madam:

Respectfully submitted is the following:

1. Change of attorney docket number and change of address notice

If you have any questions, please do not hesitate to contact us.

Regards,
Annette Valdivia

In case of a problem with this transmission, please call the Fax Operator at 408.282.1866

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Attorney Docket No. 034521-003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

CONTROL NO.: 90/006,460

PATENT NO.: 6,066,160

FILING DATE: November 25, 2002

TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINIMALLY INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING

EXAMINER: Woo, J.

ART UNIT: 3731

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WASHINGTON, D.C. 20231

CHANGE OF ATTORNEY DOCKET NUMBER
AND CHANGE OF ADDRESS NOTICE

Please change the Attorney Docket No. for this patent application to 034521-003.

Please address all further communications regarding this application to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Telephone (408) 292-5800; Facsimile (408) 287-8040

Respectfully submitted,

THELEN REID & PRIEST LLP

Robert E. Krebs

Reg. No. 25,885

Dated:

12/2/03

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Patent Number

6,066,160

Issue Date

May 23, 2000

Application Number

09/198,087

Filing Date

November 23, 1998

First Named Inventor

Colvin

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☐

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☐

Assignee of record of the entire interest. See 37 CFR 3.71.

Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒

Attorney or agent of record.

Typed or
Printed Name

Todd S. Sharinn

Signature

Date

October 22, 2002

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of _____ forms are submitted.

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| PATENT NUMBER (if known) | APPLICATION NUMBER |
|-----------------------------|--------------------|
| 6,066,160 | |

(check one)

☐ Applicant/Inventor

☒ Attorney or agent of record 42,144
 (Reg. No.)

☐ Assignee of record of the entire interest. See
 37 CFR 3.71. Statement under 37 CFR 3.73(b)
 is enclosed enclosed. (Form PTO/SB/96)

☐ Assignment recorded at Fram

Signature

Todd S. Sharinn

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Applicant(s): Colvin et al.

Docket No.

51822.010700

Serial No.

09/198,087

Filing Date

November 23, 1998

Examiner

Gary Jackson

Group Art Unit

3731

Invention: **PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINIMALLY INVASIVE SURGERY
AND TO FACILITATE STANDARD TISSUE SECURING**


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FILE LOCATION 9200 SERIAL NUMBER 09198087 PATENT NUMBER 6066160

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ON 03/28/01 THE ADDRESS OF RECORD FOR CUSTOMER NUMBER 26614 IS:

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AND THE PRACTITIONERS OF RECORD FOR CUSTOMER NUMBER 26614 ARE:

18637 42144

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THE UNIVERSITY OF CHICAGO

PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINIMALLY INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING

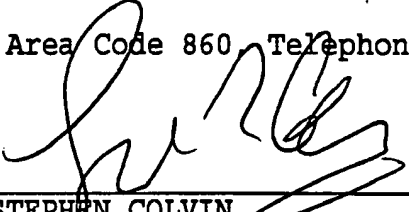
We hereby state that we have reviewed and understand the contents of the above identified specification, including the claims.

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or

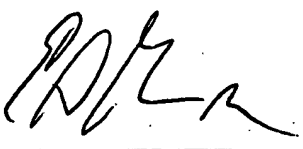
imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

We hereby appoint Todd S. Sharinn, Registration No. 42,144, whose Post Office Address is Pepe & Hazard LLP, 225 Asylum Street, Hartford, Connecticut 06103, our attorney to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith. Address all correspondence to Todd S. Sharinn at the aforesaid address and direct all telephone calls to him at Area Code 860 Telephone No. 241-2631.

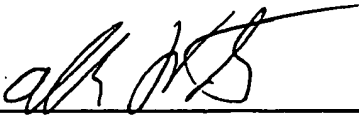
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Date

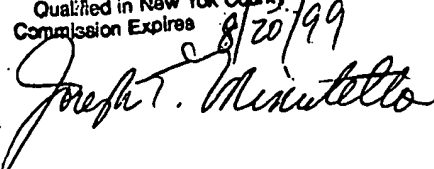

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Qualified in New York County
Commission Expires 8/20/99.

Joseph T. Minutello

2025-11-17 14:29:00

EXHIBIT 4

**KNOTLESS SUTURING SYSTEM
LICENSE AND DEVELOPMENT AGREEMENT**

THIS LICENSE AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this 5th day of November, 1998 to be effective as of such date (the "Effective Date"), between Quickie, LLC; a New York limited liability company (hereinafter collectively referred to as the "Licensor"), and Medtronic, Inc., a Minnesota corporation (hereinafter referred to as "Medtronic").

RECITALS:

WHEREAS, Medtronic designs, develops and manufactures medical devices and has developed expertise and intellectual property in the cardiovascular, vascular and neurological field.

WHEREAS, the Licensor has expertise in the areas of cardiac surgery.

WHEREAS, the Licensor has developed concepts for certain novel technologies which relate to surgical attachment techniques for use in attaching prosthetic, bioprosthetic, or homographic devices to soft tissue in connection with cardio-thoracic surgery in humans.

WHEREAS, Medtronic and the Licensor desire to enter into this Agreement wherein the Licensor and Medtronic will agree to cooperate in the development of systems, devices and methods for knotless securing of sutures.

WHEREAS, the Licensor desires to grant to Medtronic certain license rights with respect to the concepts and the products which may be created through development work performed under this Agreement.

AGREEMENT:

In consideration of the representations, warranties, covenants and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties mutually agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 "Affiliate" of a specified person means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "Control" shall mean ownership of more than 50% of the shares of stock entitled to vote for the election of directors in the case of a corporation, and more than 50% of the voting power in the case of a business entity other than a corporation.

1.2 "Commercial Approval" means the United States Food and Drug Administration's ("FDA's") approval of any Royalty Product for commercial sale by Medtronic.

1.3 "Development Project" means the research and development process to be conducted by the parties for development of the Product.

1.4 "Expiration" or "Expired" shall mean, with respect to a particular patent, the expiration, abandonment, cancellation, disclaimer, award to another party other than the Licensor, its employees or representatives or a licensor to the Licensor in an interference proceeding, by a court or other authority of competent jurisdiction, which is not subject to further appeal or declaration of invalidity or unenforceability by a court or other authority of competent jurisdiction (including rejection in a re-examination or re-issue proceeding) of such patent, which is not subject to further appeal. "Unexpired" shall mean a patent that has not Expired.

1.5 "Field of Use" means all applications in the area of cardiovascular medicine.

1.6 "First Commercial Release" means approval by Medtronic of a Royalty Product for commercial sale in any country pursuant to Medtronic's customary commercial release executive approval procedures and guidelines.

1.7 "Intellectual Property" means U.S. and foreign patents and patent applications, know-how, trade secrets, inventions, discoveries and technical information including but not limited to information embodied in drawings, designs, copyrights, copyright applications, trademarks and trademark applications, material specifications, processing instructions, formulas, equipment specifications, product specifications, confidential data, computer software, electronic files, research notebooks, invention disclosures, research and development reports and the like related thereto and all amendments, modifications, and improvements to any of the foregoing.

1.8 "Inventions" means any invention, discovery, idea, know-how, trade secret, data, information, technology, process or concept, whether or not patented or patentable, and whether or not memorialized in writing.

1.9 "Joint Inventions" means any invention, discovery, idea, know-how, trade secret, data information, technology, process of concept, whether or not patented or patentable, and whether or not memorialized in writing, which are jointly developed by Medtronic and the Licensor as a result of the work performed as part of the Development Project.

1.10 "Net Sales of Royalty Products" for a particular period means the amounts that Medtronic (or any sublicensee of Medtronic's license rights hereunder) is paid by third parties (eliminating transactions among Affiliates within Medtronic, or within such sublicensees) for commercial sales (excluding sales for use in clinical trials or other testing purposes) of Royalty Products during such period, and excluding the following "Invoice Adjustments": (i) discounts and allowances, (ii) credits or repayments due to rejections, defects or returns, and (iii) net of amounts previously included in Net Sales of Royalty Products that were written-off by Medtronic or such sublicensee of Medtronic during such period as uncollectible. If Medtronic or any Affiliate of Medtronic sells at a single price or rate a

combination or package of products, not all of which if sold individually would be Royalty Products, then "Net Sales of Royalty Products" with respect to such sales of combination or package of products shall equal the number of units of Royalty Products sold as part of a combination or package of products multiplied by the respective average net selling price during the applicable royalty payment period of the same type of Royalty Products sold individually (excluding Invoice Adjustments). Net Sales which are denominated in currencies other than U.S. Dollars shall be converted into U.S. Dollars according to Medtronic's standard accounting policy for conversion of foreign currencies.

1.11 "Product" means any device and/or method for the knotless securing of sutures which comprises drawing the sutures through a channel which is housed within a freestanding member or incorporated within a prosthetic device, the channel having either:

- (a) at least one inflexible ridge located within the channel and shaped and oriented so as to radially divert the path of the suture within the channel thereby permitting the passage of the suture in a single direction while opposing any movement of the suture in the opposite direction, or
- (b) a cavity, which is shaped and sized to house a freely moving member therein, and which has at least one mating receptacle which is positioned on a wall of the cavity so as to facilitate a mating relationship between the member and the mating receptacle, thus ensuring the passage of the suture in a single direction while opposing any movement of the suture in the opposite direction.

Medtronic acknowledges that Licensor's Intellectual Property may be broader in scope than the Product, as defined herein.

1.12 "Royalty Product" means any commercially released product sold by Medtronic in the Field of Use that embodies any Developed Technology.

1.13 "Developed Technology" means Intellectual Property, Inventions or Joint Inventions pertaining to the Product (as defined above), within the Field of Use, that are conceived, designed, or developed from or through the work performed by the parties under the Development Project, whether jointly or solely. Developed Technology shall not include any Intellectual Property or Inventions which do not pertain to the Product (as defined above) and which a party can demonstrate by competent evidence were not conceived, designed, or developed from or through the work performed by the parties under the Development Project, whether jointly or solely.

ARTICLE 2 PROJECT DESCRIPTION

2.1 Development. Medtronic and the Licensor will use their reasonable best efforts to conduct the Development Project to develop the Product for use in attaching prosthetic, bioprosthetic, or homolographic devices to soft tissue in connection with cardio-thoracic surgery in humans.

2.2 Development Contacts. Each party will identify one person who will be serve as the primary contact for all communications relating to the Development Project. The persons so identified will periodically, but no less than quarterly, provide a report to the Licensor and Medtronic setting forth a summary of the work performed under the Development Project.

2.3 Alternative Development. Nothing in this Agreement or the Development Project will limit either party's ability to develop systems, devices or methods for knotless securing of sutures by any technique or technology that is outside the scope of the Development Project and does not employ Developed Technology, even if such efforts could develop products that compete with the Royalty Product.

ARTICLE 3 DEVELOPMENT FUNDING

3.1 Development Funding. Medtronic shall be responsible for payment of all costs incurred by it in implementing the Development Project. Medtronic shall reimburse the Licensor for its costs incurred in participating in the Development Project to the extent such costs are approved in writing, in advance, by Medtronic.

3.2 Travel Reimbursement. In addition to the amounts to be paid to the Licensor pursuant to section 4.1, Medtronic will reimburse the Licensor for reasonable travel and lodging expenses incurred specifically at Medtronic's request and approved in advance by Medtronic.

3.3 Payment. Reimbursement of all costs under this Agreement will be made within 30 days of Medtronic's receipt of an invoice and supporting receipts from the Licensor.

ARTICLE 4 INTELLECTUAL PROPERTY

4.1 Ownership of Intellectual Property. All Intellectual Property of Medtronic existing on the Effective Date shall be and remain the property of Medtronic. All Intellectual Property of the Licensor existing on the Effective Date shall be and remain the property of the Licensor. Any Intellectual Property developed solely by employees of the Licensor, or consultants working for the Licensor under this Agreement, shall be the property of the Licensor subject to the license rights granted Medtronic under this Agreement. All Developed Technology, whether Joint Inventions or otherwise, shall be the property of the Licensor and Medtronic agrees to execute all documents necessary to vest sole ownership of such Developed Technology in the Licensor, subject to the license rights granted Medtronic under this Agreement.

4.2 Licensor Assurance of Transfer. The Licensor shall ensure that all employees, consultants and third parties who perform any portion of the Licensor's development obligations under this Agreement have entered into written agreements with the Licensor whereby such employee, consultant or third

party assigns to the Licensor all ownership rights in any Intellectual Property made or developed by such employee, consultant or third party in the course of such development work for the Licensor.

4.3 Medtronic Assurance of Transfer. Medtronic shall ensure that all employees, consultants and third parties who perform any portion of Medtronic's development obligations under this Agreement have entered into written agreements with Medtronic whereby such employee, consultant or third party assigns to Medtronic all ownership rights in any Intellectual Property made or developed by such employee, consultant or third party in the course of such development work for Medtronic.

4.4 Patent Prosecution. The Licensor shall file, prosecute, and maintain all U.S. and foreign patents related to the Developed Technology it deems appropriate to obtain in its sole discretion and at its sole expense. The Licensor will provide Medtronic with a copy of any of its patent applications on the Product and will keep Medtronic advised of the progress of any patent prosecution as it relates to the Field of Use. Medtronic shall be entitled to provide the Licensor non-binding input on such prosecution.

4.5 Prosecution of Infringement of Developed Technology.

(a) Each of Medtronic and the Licensor shall promptly notify the other if it knows or has reason to believe that rights to the Developed Technology are being infringed or misappropriated by a third party within the Field of Use or that such infringement or misappropriation is threatened. The Licensor shall, after learning of and investigating such alleged infringement or misappropriation, send notice to the Medtronic electing to do one of the following: (i) prosecute such alleged infringement or misappropriation for the Licensor's own account; (ii) offer Medtronic the choice of participating in such prosecution, or (iii) decline to prosecute such alleged infringement or misappropriation.

(b) If the Licensor elects to prosecute such alleged infringement or misappropriation for its own account pursuant to (a)(i) above, the Licensor shall be solely responsible for payment of all of its own costs of prosecution and of negotiating settlement, and shall retain all proceeds from such prosecution. Medtronic shall have the right, at its own expense, to join the Licensor as a party plaintiff to any such proceeding if Medtronic believes it is necessary to successfully prosecute such infringement or misappropriation.

REDACTED

(d) If the Licensor elects not to prosecute pursuant to (a)(iii) above, Medtronic may, at its option, prosecute such alleged infringement or misappropriation for its own account, in which event

Medtronic shall be solely responsible for all costs of prosecution and of negotiating settlement and shall retain all proceeds from such prosecution.

ARTICLE 5 LICENSE TO MEDTRONIC

5.1 Grant of License. Subject to the terms and conditions of this Agreement, the Licensor hereby grants to Medtronic an irrevocable, worldwide, exclusive license to the Developed Technology to make, have made, use, sell and have sold Royalty Products incorporating or utilizing, and otherwise to commercialize and exploit, the Developed Technology in the Field of Use.

5.2 Term of License. Subject to the terms and conditions of this Agreement, this Agreement and the license granted under Section 6.1 shall continue until such time as all the last of the patents issued for Products under the Developed Technology have Expired, or, if no patents have issued, until the date ten (10) years after the first commercial sale of a Royalty Product, at which time the exclusive license rights of Medtronic set forth in Section 5.1 shall be deemed to be converted into a perpetual, fully paid, exclusive, worldwide, irrevocable royalty-free license to make, have made, use, sell and have sold Products embodying any of the Developed Technology in the Field of Use.

ARTICLE 6 LICENSE AND ROYALTIES PAYMENTS

6.1 Pre-paid Royalties. In consideration of the Licensor's entering into this Agreement and granting Medtronic certain rights to the Developed Technology and subject to the termination provisions of Section 9(a), below, Medtronic agrees to make the following payments:

REDACTED

The payments identified above shall be deemed pre-paid royalties and accounted for pursuant to Section 6.4, below.

6.2 Royalty. Commencing with the First Commercial Release of a Royalty Product, Medtronic shall pay to the Licensor a royalty on Net Sales of Royalty Products to customers. The Royalty Rate paid by Medtronic shall be determined as follows:

REDACTED

6.3 Reports and Payments. Within thirty (30) days after the end of each Medtronic Fiscal Quarter (July 31, October 31, January 31, and April 30), Medtronic shall provide the Licensor with a written report indicating the amount of Net Sales of Royalty Products during such preceding Quarter and the amount of the royalties due for such Quarter. Simultaneously with making such report, Medtronic shall pay to the Licensor the amount of royalties then due. Royalties payable to the Licensor by Medtronic from non-U.S. Net Sales of Royalty Products shall be paid in U.S. currency to be converted from foreign currency at the exchange rate used by Citibank of New York, in effect the first day of each month included in the Quarter in which the royalty payment is due the Licensor.

6.4 Offsetting Pre-Paid Royalties. All pre-paid royalties paid pursuant to Section 6.1 shall be offset as a credit against royalties due and owing pursuant Section 6.2 pursuant to the following terms:

From date of the first commercial sale of a Royalty Product through the date thirty-six (36) months after Commercial Approval (the "Initial Payment Period"), one half of the royalties earned will be off-set against pre-paid royalties and one half will be paid to the Licensor. If at any time during the Initial Payment Period the pre-paid royalty balance reaches zero, payment of the full royalty as set forth in Section 6.2, above, will commence. If at the end of the Initial Payment Period a pre-paid royalty balance remains, the full amount of royalties due going forward will be off-set against pre-paid royalties until the balance is zero. At that point the payments to the Licensor will resume as set forth in Section 6.2.

6.5 Records. Medtronic agrees to keep accurate written records sufficient in detail and in accordance with generally accepted accounting principles, to enable the royalties payable under this Agreement by Medtronic to be determined and verified. Such records for a particular Quarter shall be retained by Medtronic for a period of not less than five years after the end of such Quarter.

6.6 Audit of Records. Upon reasonable notice and during regular business hours, Medtronic shall from time to time (but no more frequently than once quarterly) make available the records referred to in Section 5.3 for audit at the Licensor's expense by independent auditors to verify the accuracy of the reports provided to the Licensor. In the event such audit discloses that the fees previously paid or reported as due to the Licensor have been under-paid and/or under-reported as of the date of the audit, then Medtronic shall immediately pay the difference and all expenses incurred by the Licensor in performing the audit to the Licensor.

ARTICLE 7 COMMERCIALIZATION OF PRODUCTS

7.1 Regulatory Approval. Medtronic shall be responsible for obtaining all regulatory approvals for Royalty Products arising from the Developed Technology under this Agreement. Determination of which regulatory approvals to obtain for the Royalty Products shall be at the sole discretion of Medtronic. The Licensor will, at Medtronic's request and expense, assist Medtronic with the approval process as needed. The Licensor shall furnish all information and documents in its possession or control which may be required to comply with United States Food and Drug Administration rules and regulations with respect to Royalty Products arising from the Developed Technology.

7.2 Manufacture. Medtronic shall be responsible for the manufacture of Royalty Products. All manufacturing of Royalty Products shall be conducted in compliance with all applicable laws and regulations and in accordance with Medtronic's customary quality procedures.

7.3 Indemnification. Medtronic agrees to and shall indemnify and hold harmless the Licensor (including its principals, employees, agents, officers, and directors) from and against any and all claims, demands, costs, expenses, judgments, and liabilities (including but not limited to attorney's fees) arising out of or relating to the use, manufacture, sale, sublicensing, and development of the Royalty Products manufactured or sold by Medtronic or any of its Affiliates.

7.4 Technology Transfer. The Licensor shall, upon Medtronic's request from time to time, after completion of development milestones, provide to Medtronic, at reasonable expense to Medtronic, drawings, specifications, processes, materials, and any manufacturing procedures and such other documentation and know-how as is reasonably necessary or useful to enable Medtronic to fully utilize the license granted to Medtronic under this Agreement.

7.5 No Assurance. Neither the Licensor, nor Medtronic make any representation or warranty that the Developed Technology will be suitable for use in humans or can or will be developed satisfactorily for Commercial Approval or continued sale thereafter. The Licensor and Medtronic acknowledge that

Medtronic and its Affiliates are and will continue to be engaged in developing and exploiting technologies, processes and products which are similar to or competitive with the Developed Technology; except for the restrictions on use of Confidential Information contained in this Agreement, nothing herein is intended to limit Medtronic or its Affiliates from continuing such development or exploitation for Medtronic's benefit and such development and exploitation will be without obligation to the Licensor, except as otherwise provided for under this Agreement.

ARTICLE 8 CONFIDENTIALITY

Medtronic and the Licensor agrees to make no use of the other party's Confidential Information or Trade Secrets other than as reasonably required to effectuate the purpose of this Agreement, and shall not divulge Confidential Information or Trade Secrets to any of its employees or staff not having a need for access to such Confidential Information or Trade Secrets and shall maintain in confidence Confidential Information and Trade Secrets with the same degree of care that would be exercised by a reasonable prudent person in similar circumstances.

Confidential Information means know-how, and unpublished information disclosed that does not rise to the status of Trade Secrets (whether before or during the term of this Agreement) by one of the parties (the "disclosing party") to the other party (the "receiving party") or generated under this Agreement, excluding information which:

- (a) was already in the possession of receiving party prior to its receipt from the disclosing party (provided that the receiving party is able to provide the disclosing party with reasonable documentary proof thereof);
- (b) is or becomes part of the public domain by reason of acts not attributable to the receiving party;
- (c) is or becomes available to receiving party from a source other than the disclosing party which source, to the best of receiving party's knowledge, has rightfully obtained such information and has no obligation of non-disclosure or confidentiality to the disclosing party with respect thereto;
- (d) is made available by the disclosing party to a third party unaffiliated with the disclosing party on an unrestricted basis;
- (e) has been independently developed by the receiving party without breach of this Agreement or use of any Confidential Information of the other party (provided that the receiving party is able to provide the disclosing party with reasonable documentary proof thereof); or

(f) is required by court or governmental order, law or regulation to be disclosed, provided, however, that the receiving party required to disclose such information shall provide the disclosing party with reasonable advance notice of any such proposed disclosure to give such party a reasonable period of time in which to seek confidential treatment of such disclosure to applicable authority or to applicable authorities regarding such disclosure.

Confidential Information shall not be disclosed or published during the term of this Agreement and for a period of nine (9) years after the termination of this Agreement for any reason. All Confidential Information and Trade Secrets disclosed by one party to the other under this Agreement shall be in writing and bear a legend "Company Proprietary," "Company Confidential," "Proprietary Information," "Confidential Information," "Trade Secrets" or words of similar import or, if disclosed in any manner other than writing, shall be preceded by an oral statement indicating that the information is Company proprietary, confidential or Trade Secrets, and shall be followed by transmittal of a reasonably detailed written summary of the information provided to the receiving party with identification as Confidential Information and Trade Secrets designated as above within thirty (30) days.

Trade Secrets means information of either party, including, but not limited to, methods, techniques, drawings and unpublished information which derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The recipient of a Trade Secret shall not disclose or publish, other than as permitted herein or mutually agreed upon, a Trade Secret for as long as the information qualifies as a Trade Secret under applicable law.

ARTICLE 9 TERMINATION

This Agreement shall take effect on the date first written above and shall continue until the expiration of the Term of the License pursuant to Section 5.2 of this Agreement unless otherwise terminated as follows:

(a) Medtronic may, in its sole discretion, terminate this Agreement at any time effective upon written notice to the Licensor. Upon such termination, Medtronic shall only be liable for any payments then due and owing under Section 6, above. In the event Medtronic terminates this Agreement pursuant to this Section 9(a), the License granted herein shall revert to the Licensor and the Licensor shall be free to license the Developed Technology to a third party. The Licensor will also be entitled to retain all pre-paid royalties, royalties, and expenses paid through the date of termination. Upon such termination, the parties shall have no further obligation to each other under this Agreement, except for the Indemnification and Confidentiality obligations set forth herein.

(b) Notwithstanding any other terms of this Agreement, if, during the period Medtronic is required to pay royalties under this Agreement, Medtronic commercially releases a medical

device, pursuant to its customary commercial release executive approval procedures and guidelines, which device (i) has received Commercial Approval, as defined in this Agreement, (ii) incorporates any device and/or method for the knotless securing of sutures which is not within the definition of a Product set forth in Section 1.11, above, and (iii) competes or could compete with any Royalty Product sold by Medtronic under this Agreement, the Licensor may terminate this Agreement upon ten (10) days written notice to Medtronic. In the event of termination under this subsection, Medtronic shall have a period of six (6) months from the date of termination to complete manufacture of all work then in process and sell remaining inventory of Royalty Products, subject to the royalty obligations of Section 6, above. The six (6) month period may be extended for an additional six (6) months only upon terms agreed to by the parties in writing. Furthermore, if the termination under this subsection occurs within the five (5) year period following the First Commercial Release, Medtronic shall also pay to the Licensor, within thirty (30) days of the date of such termination, a sum equal to the total royalties paid to Licensor by Medtronic under this Agreement during the six (6) months immediately prior to the date of termination. Medtronic further agrees that the price it charges for Product after any termination pursuant to this subsection will not be less than ninety percent (90%) of the average selling price Medtronic charged for Product during the six (6) month period prior to the termination.

(c) If either party breaches any of the material terms, conditions or agreements of this Agreement, then the other party may terminate this Agreement, at its option and without prejudice to any of its other legal and equitable rights and remedies, by giving the breaching party ninety (90) days notice in writing, particularly specifying the breach. Such notice of termination shall not be effective if the other party cures the specified breach within such 90-day period, or, in the case of breaches not reasonably curable within such 90 days, if such party commences the cure thereof within such 90 days and diligently thereafter prosecutes such cure.

(d) The Licensor may, by written notice to Medtronic, terminate this Agreement at any time, in the event of a failure by Medtronic to pay timely any royalty payments or any other payments that are required to be made to the Licensor hereunder, subject to notice by the Licensor of such failure and an opportunity for Medtronic to cure such failure. Medtronic shall have thirty (30) days from the date Medtronic receives such notice from the Licensor to make such payment.

(e) Either party may, by written notice to the other party, terminate this Agreement in the event that such other party becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership or otherwise loses legal control of its business.

(f) Notwithstanding any contrary foregoing provision, termination of this Agreement shall not relieve Medtronic from its obligation to make all royalty payments and reports with respect to Net Sales of Royalty Products occurring through the date of termination, including a final report, provided for herein. The Licensor shall have the right to make a final audit no sooner than forty-five (45) days and no later than one hundred twenty (120) days after receiving Medtronic's final report.

(g) If the Licensor terminates this Agreement under Sections (b), (c), or (d), above, the Licensor shall have the exclusive option, exercisable by written notice to Medtronic within sixty (60) days after such Termination to cause Medtronic to assign back to the Licensor all of Medtronic's right, title and interest to the Developed Technology. Notwithstanding such transfer to the Licensor, Medtronic shall be entitled to maintain copies of all data and records for purposes of Medtronic's regulatory compliance or Medtronic's responding to any legal or administrative claim or investigation. Upon such termination, the parties shall have no further obligation to each other under this Agreement, except for the Indemnification and Confidentiality obligations set forth herein.

(h) If Medtronic terminates this Agreement under Sections (b) or (d), above, Medtronic may, at its option and upon written notice to the Licensor, either (i) retain its exclusive license under Section 5.1, above, provided it continues to pay the royalties required by Section 6 or (ii) convert its license to a non-exclusive license, in which case it will no longer be required to pay the royalties required by Section 6. Upon such termination, the parties shall have no further obligation to each other under this Agreement, except for the Indemnification and Confidentiality obligations set forth herein.

(i) In the event of termination of this Agreement after First Commercial Release, Medtronic shall be entitled during the ninety (90) days immediately following the date of such termination to complete all work-in-process and sell its remaining inventory of Royalty Products, subject to the payment of royalties pursuant to Section 6 on Net Sales of such Royalty Products.

ARTICLE 10 CERTAIN REPRESENTATIONS

10.1 Representations of the Licensor. The Licensor represents, warrants and covenants to Medtronic that:

(a) The Licensor (i) is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New York (ii) has full corporate power to conduct the operations in which it is presently engaged and to enter into and perform its obligations under this Agreement, and (iii) has all rights and privileges necessary to assign and license any Intellectual Property as may be required by this Agreement.

(b) The Licensor has taken all necessary corporate action under the laws of the State of New York and its charter, bylaws or other governing instruments to authorize the execution and consummation of this Agreement. This Agreement constitutes the valid and legally binding agreement of the Licensor, enforceable against the Licensor in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein or therein, will violate any provision of the charter, bylaws or other

governing instruments of the Licensor or any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court or governmental agency or instrumentality, domestic or foreign, or conflict with or result in any breach of any of the terms of or constitute a default under or result in termination of or the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature pursuant to the terms of any contract or agreement to which the Licensor is a party or by which the Licensor or any of its assets is bound.

(d) There are no actions, suits, claims, disputes or proceedings or governmental investigations pending or threatened against the Licensor or any of its Affiliates, either at law or in equity, before any court or administrative agency or before any governmental department, commission, board, bureau, agency or instrumentality, or before any arbitration board or panel which would materially impair its ability to enter or perform this Agreement. Neither the Licensor nor any of its officers, directors, employees or consultants has failed to comply with any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court or other-governmental agency or instrumentality, domestic or foreign, which failure in any case would in any material respect impair any rights of Medtronic under this Agreement.

(e) There are no actions, suits, claims, disputes, proceedings, investigations, contracts, agreements, rules, or other obligations to which the Licensor or any individual members of the Licensor are either subject to or a party to which would prevent them or the Licensor from entering into this Agreement and fulfilling its terms and conditions, including, but not limited to, the assignment or license of Intellectual Property and the receiving of payments as provided for in this Agreement.

10.2 Representations of Medtronic. Medtronic represents, warrants and covenants to the Licensor that:

(a) Medtronic, Inc. is a corporation duly organized, validly existing, and in good standing under the laws of the State of Minnesota and has full corporate power to conduct the business in which it is presently engaged and to enter into and perform its obligations under this Agreement, including but not limited to, the assignment and license of Intellectual Property as may be required by this Agreement.

(b) Medtronic has taken all necessary corporate action under the laws of the state of its incorporation and its articles of incorporation and bylaws to authorize the execution and consummation of this Agreement. This Agreement constitutes the valid and legally binding agreements of Medtronic, enforceable against Medtronic in accordance with its respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein or therein will violate any provision of the articles and bylaws of Medtronic or any law, rule, regulation, writ, judgment, injunction, decree, determination, award or other order of any court or governmental agency or instrumentality, domestic or foreign, or conflict

with or result in any breach of any of the terms of or constitute a default under or result in termination of or the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature pursuant to the terms of any contract or agreement to which Medtronic is a party or by which Medtronic or any of its assets is bound.

ARTICLE 11 MISCELLANEOUS

11.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors or assigns of the parties hereto; provided, that (i) the rights and obligations of the Licensor herein may not be assigned except to any person who succeeds to substantially all of the Licensor's business, and (ii) the rights and obligations of Medtronic herein may not be assigned except to any person who succeeds to all or a substantial portion of Medtronic's business to which this Agreement relates. Any attempted assignment of this Agreement in violation of this Section 10.1 shall be null and void.

11.2 Entire Agreement. This Agreement, including the Exhibits and any Attachments hereto and thereto constitute the entire agreement of the parties with respect to the subject matter of such agreements and supersede all previous proposals or agreements, oral or written, and all negotiations, conversations or discussions heretofore had between the parties related to the subject matter of such agreements.

11.3 Survival. All of the representations, warranties, and indemnification's made in this Agreement, and all terms and provisions hereof intended to be observed and performed by the parties after the termination hereof (to the extent specified herein), shall survive such termination and continue thereafter in full force and effect, subject to applicable statutes of limitations.

11.4 Amendment, Waiver, Discharge, etc. This Agreement may not be amended, released, discharged, abandoned, changed or modified in any manner, except by an instrument in writing signed on behalf of each of the parties to this Agreement by their duly authorized representatives. The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part of it or the right of either party after any such failure to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

11.5 Execution in Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by each party and delivered to the other party.

11.6 Titles and Headings; Construction. The titles and headings to Sections and Articles herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. This Agreement shall be construed without regard to any

presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

11.7 Benefit. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors or permitted assigns, or sublicensees any rights, remedies, obligations or liabilities under or by reason of this Agreement.

11.8 Notices. All notices or other communications to a party required or permitted hereunder shall be in writing and shall be delivered personally or by telecopy (receipt confirmed) to such party or shall be sent by a reputable express delivery service or by certified mail, postage prepaid with return receipt requested, addressed as follows:

to Medtronic: Medtronic, Inc.
Tom Armitage, M.D.
7000 Central Avenue N.E.
Minneapolis, MN 55432

to Licensor: Quickie, LLC
c/o Alan Fell, Esq.
Rick, Steiner, P.C.
3 New York Plaza
New York, NY 10004

copy to: Thomas A. Ehlinger, Esq.
Medtronic, Inc. - MS300
7000 Central Avenue N.E.
Minneapolis, Minnesota 55432

11.9 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be enforced to the maximum extent permissible and the remaining provisions shall nonetheless be enforceable according to their respective terms.

11.10 Execution of Further Documents. Each party agrees to execute and deliver without further consideration any further applications, licenses, assignments or other documents, and to perform such other lawful acts as the other party may reasonably request to fully secure and/or evidence the rights or interests herein.

11.11 Arbitration. Any dispute arising out of or relating to this Agreement or any breach hereof will first be submitted to an appointed representatives of each of the parties and if the representatives fail to resolve the dispute, such dispute shall be arbitrated in accordance with the rules of the American Arbitration Association. The results of such arbitration proceedings shall be binding upon the parties hereto, and judgment may be entered upon the arbitration award in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction. The venue for such arbitration and interim injunctive relief shall be the Southern District of New York.

11.12 Governing Law. This agreement shall governed and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, each of the parties has caused this License and Development Agreement to be executed in the manner appropriate to each.

MEDTRONIC, INC.

QUICKIE, LLC

By Philip M. Laughlin
Name Philip M. Laughlin
Title President, Cardiac Surgery
Date 11/5/98

By Aubrey Galloway
Name AUBREY GALLOWAY
Title PRESIDENT
Date OCT. 28, 1998

j:\ehlinger\cardiac\valves\colvin\knotless\nyuknot9.doc

tae 10/27/98

SEP. 7. 1999 4:49PM LAW DEPT LITIGATION 612 514 9667

No. 3423 P. 2/2

F.N. 1086461

S.N. 02

AMENDMENT

This AMENDMENT is made and entered into this 8th day of September, 1999, and amends the Knotted Suture System License and Development Agreement entered into by and between Medtronic, Inc., a Minnesota corporation having offices at 7000 Central Avenue N.E., Minneapolis, 55432 USA (hereinafter referred to as "Medtronic"), and Quickie, LLC, a New York limited liability company (hereinafter referred to as "Licensor"), dated November 5, 1998.

The parties agree to amend the Agreement as hereinafter set forth.

1. Section 5.1 shall be replaced in its entirety and amended as follows:

"5.1 Prepaid Royalties. In consideration of the Licensor's entering into this Agreement and granting Medtronic certain rights to the Developed Technology and subject to the termination provisions of Section 9(a), below, Medtronic agrees to make the following payments:

REDACTED

The payments identified above shall be deemed pre-paid royalties and accounted for pursuant to Section 5.4, below."

2. Except to the extent provided above, the remaining terms and conditions of the original agreement shall remain in full force and effect.

MEDTRONIC, INC.

QUICKIE, LLC

By James G. Foster
 Name JAMES G. FOSTER
 Title Vice Pres. General Mgr.
 Date 9/9/99

By Andrew C. Gull
 Name Andrew C. Galloway
 Title President
 Date 9/8/99

in witness whereof, the undersigned have hereunto set their hands and seals at New York, New York, on the 8th day of September, 1999.

WITNESSES

P.2

No. 5047 P. 2/2



Medtronic

FAXED

John W. Borg
Vice President and Senior Counsel
October 28, 1999

Medtronic, Inc.
7000 Central Avenue NE
Minneapolis, MN 55432-1576 USA
www.medtronic.com

rel 612.514.3249
Fax 612.514.8667
john.william.borg@medtronic.com

Alan Fell, Esq.
Rick, Steiner, P.C.
Three New York Plaza
New York NY 10004

By FAX: (212) 422-0158

Dear Mr. Fell:

As you know, we have completed the wet lab regarding the "quickie" attachment mechanism. Jim Foster and Dr. Colvin have spoken about it, and Jim explained that, all things considered, it is a concept we can no longer support under the Agreement. Accordingly, we are exercising our option under the Agreement to end our support of the device, and will, of course, comply with the terms of the Agreement.

As Jim Foster indicated to Dr. Colvin, we would be pleased to meet and outline the factors that led to this decision. We would also like to meet to consider any other concepts Dr. Colvin's group may wish to discuss and, hopefully, continue this important collaborative effort to develop innovative products.

We know Dr. Colvin will soon return from Asia, and Jim suggested a meeting in New York City on November 3 to discuss these issues. A new Confidential Disclosure Agreement can be executed after we have discussed its specifics.

Please let us know if this date is okay, or, if not, can you provide alternative dates? We look forward to our meeting

Sincerely,

MEDTRONIC, INC.

John W. Borg
John W. Borg

cc:
J. Foster

11Nov44NYHJ.doc

When Life Depends on Medical Technology

EXHIBIT 5

US District Court Civil Docket

U.S. District - New York Southern
(FS - Suspended)

2:02cv1157

Quickie, Llc v. Medtronic, Inc

This case was retrieved from the court on Monday, April 04, 2005

| | |
|--|--------------------------------|
| Date Filed: 02/13/2002 | Class Code: |
| Assigned To: Judge Gerard E Lynch | Closed: no |
| Referred To: | Statute: 35:271 |
| Nature of suit: Patent (830) | Jury Demand: Plaintiff |
| Cause: Patent Infringement | Demand Amount: \$0 |
| Lead Docket: None | NOS Description: Patent |
| Other Docket: None | |
| Jurisdiction: Federal Question | |

Litigants

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Plaintiff

Attorneys

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Todd S Sharinn
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[Term: 11/04/2002]
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Email: Sharinnt@gtlaw.com

Medtronic, Inc
Defendant

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Chryssa V Valletta
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Medtronic, Inc Counter
Claimant

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212-547-5400

Quickie, Llc Counter
Defendant

Lara A Johnson
[COR LD NTC]

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[Term: 11/04/2002]
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| Date | # | Proceeding Text |
|------------|----|---|
| 02/13/2002 | 1 | COMPLAINT filed. Summons issued and Notice pursuant to 28 U.S.C. 636(c). FILING FEE \$ 150.00 RECEIPT # 430326. (gmo) (Entered: 02/20/2002) |
| 02/13/2002 | 2 | RULE 1.9 CERTIFICATE filed by Quickie, L.L.C. . (gmo) (Entered: 02/20/2002) |
| 02/13/2002 | -- | Magistrate Judge Michael H. Dolinger is so designated. (gmo) (Entered: 02/20/2002) |
| 04/11/2002 | 3 | STIPULATION and ORDER, reset answer due for 4/26/02 for Medtronic, Inc. (signed by Judge Gerard E. Lynch) (kw) (Entered: 04/12/2002) |
| 04/12/2002 | 4 | AFFIDAVIT OF SERVICE of summons and complaint as to Medtronic, Inc. by mail and facsimile to counsel on 3/15/02 . . (bai) (Entered: 04/17/2002) |
| 04/24/2002 | 5 | NOTICE OF MOTION by Medtronic, Inc. for an order admitting Raphael V. Lupo, Donna M. Tanguay, Brian E. Ferguson and Steven K. Shahida to appear pro hac vice . Return Date 6/4/02 at 9:30. Affidavits of Chryssa V. Valletta, Raphael V. Lupo, Donna M. Tanguay, Brain E. Ferguson and Steven K. Shahida in support attached. (bai) (Entered: 04/26/2002) |
| 04/24/2002 | 6 | RULE 1.9 CERTIFICATE filed by Medtronic, Inc. . (bai) (Entered: 04/26/2002) |
| 04/24/2002 | 7 | ANSWER to Complaint and COUNTERCLAIM by Medtronic, Inc. against Quickie, L.L.C. ; Firm of: Will & Emery by attorney Chryssa V. Valletta for defendant Medtronic, Inc. (bai) (Entered: 04/26/2002) |
| 05/02/2002 | -- | Memo endorsed on motion; that the Court is granting the [5-1] motion for an order admitting Raphael V. Lupo, Donna M. Tanguay, Brian E. Ferguson and Steven K. Shahida to appear pro hac vice. (signed by Judge Gerard E. Lynch); Copies mailed. FORWARDED DOCUMENT TO ATTORNEY ADMISSIONS CLERK. (tp) (Entered: 05/02/2002) |
| 05/15/2002 | -- | CASHIER'S OFFICE REMARK on [5-1] motion for an order admitting Raphael V. Lupo, Donna M. Tanguay, Brian E. Ferguson and Steven K. Shahida to appear pro hac vice in the amount of \$100.00 paid on 05/03/02 Receipt # 437903. (dj) (Entered: 05/15/2002) |
| 05/22/2002 | 8 | SCHEDULING ORDER: Discovery pertaining to claims construction shall be completed by June 14, 2002; The parties shall submit simultaneous Markman briefs by July 1, 2002; Reply briefs shall be submitted by both parties no later than August 1, 2002. (signed by Judge Gerard E. |

Lynch); Copies mailed. (jco) (Entered: 05/22/2002)

07/03/2002 10 MEMORANDUM OF LAW by Quickie, L.L.C. re: claim construction. (dle) (Entered: 07/11/2002)

07/03/2002 11 DECLARATION of Todd S. Sharinn by Quickie, L.L.C. in support Re: [10-1] memorandum . (dle) (Entered: 07/11/2002)

07/03/2002 12 OPENING BRIEF by Medtronic, Inc. re:claim construction issues (Markman Brief). (dle) (Entered: 07/11/2002)

07/03/2002 13 DECLARATION of Stephen K. Shahida by Medtronic, Inc. in support Re: [12-1] opposition memorandum . (dle) (Entered: 07/11/2002)

07/09/2002 9 Memo-Endorsement on letter addressed to Ms. Joellen Valentine from Todd S. Sharinn, dated 7/1/02: Granting the parties extension until 7/3/02 to file and serve their Markman briefs . (signed by Judge Gerard E. Lynch); Copies mailed. (tp) (Entered: 07/11/2002)

08/01/2002 14 REPLY BRIEF by Medtronic, Inc. re: claim construction issues (Markman brief) (yv) (Entered: 08/06/2002)

08/01/2002 15 REPLY MEMORANDUM by Quickie, L.L.C. re: claim construction. (yv) (Entered: 08/06/2002)

08/01/2002 16 DECLARATION of Todd S. Sharinn by Quickie, L.L.C. in support Re: [15-1] reply memorandum . (yv) (Entered: 08/06/2002)

10/02/2002 17 ORDER; that Quickie filed this patent infringement action on 2/13/02, claiming that Medtronic, Inc, with whom it had previously entered into an agreement for the "mutual exchange of confidential information concerning the development, manufacture, and marketing of certain technologies", infringed the '160 Patent by selling a device for retaining sutures. Having briefs and appeared for a Markman hearing on 9/4/02, to discuss the key disputed terms, the action is now before the Court on claim construction; the Court rejects defendant's construction of the disputed terms and adopts plaintiff's construction, with the limitation that "aperture" encompasses not any opening, but rather one that creates a spatial relationship between the movable cam and aperture walls, as described in the patent, that capture of the cam within the aperture . (signed by Judge Gerard E. Lynch); (pl) (Entered: 10/07/2002)

11/01/2002 18 Transcript of record of proceedings before Judge Gerard E. Lynch 9/4/02. (kw) (Entered: 11/01/2002)

11/04/2002 19 STIPULATION and ORDER; that the attorneys of record for plaintiff in this action shall be changed and that Thelen Reid & Priest LLP with offices located at 40 West 57th Street, N.Y.C., be substituted for Greenberg Traurig with offices located at 885 Third Avenue, N.Y.C., as attorneys of record for such plaintiff herein . (signed by Judge Gerard E. Lynch) (pl) (Entered: 11/07/2002)

11/08/2002 20 NOTICE of CHANGE of ADDRESS by Quickie, L.L.C. Thelen Reid & Priest LLP will be moving to a new address at: Thelen Reid & Priest LLP, 875 Third Avenue, New York, NY, 10022, (212) 603-2000, Fax (212) 603-2001. (sb) (Entered: 11/14/2002)

11/26/2002 21 NOTICE OF MOTION by Medtronic, Inc. for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings . Return Date not indicated. Affirmation of Brian E. Ferfuson along with exhibits is attached. (tp) Modified on 12/04/2002 (Entered: 12/04/2002)

11/26/2002 22 MEMORANDUM OF LAW by Medtronic, Inc. in support of [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings. (tp) (Entered: 12/04/2002)

12/16/2002 23 Memo-Endorsement on letter addressed to Judge Lynch from Chryssa V. Valletta, dated 12/10/02. Re: counsel for dft request to set the foregoing scheduling order deadlines: Quickie L.L.C.'s opposition papers to be filed and served on 12/24/02 and Meltronics reply papers to be filed and served on 1/14/03. Application granted , Meltronic request that your Honor endorse said letter so that the proper exhibit # 10 (annexed to sadi letter) may become part of the Court Record. Application granted . (signed by Judge Gerard E. Lynch) (db) (Entered: 12/20/2002)

12/24/2002 24 OPPOSITION by Quickie, L.L.C. to [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings (Filed in the night deposit on 12/24/02 at 3:57 p.m.) (ae) (Entered: 12/26/2002)

12/24/2002 25 (COPY) AFFIDAVIT of Mark Fox Evens by Quickie, L.L.C. in support of [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings . (Filed in the night deposit on 12/24/02 at 3:57 p.m.) (ae) (Entered: 12/26/2002)

01/14/2003 26 REPLY MEMORANDUM by Medtronic, Inc. in support re: [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination

proceedings . (dj) (Entered: 01/21/2003)

01/23/2003 27 ORDER; denying [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings; Discovery is to be completed by 6/20/03. Extensions of the discovery schedule will be disfavored ; A status conference will be held at 10:30 a.m. on 6/27/03. A date for trial, or a schedule for the filing of dispositive motions, will be set at that time . (signed by Judge Gerard E. Lynch) (jco) (Entered: 01/27/2003)

02/26/2003 28 NOTICE OF MOTION by Medtronic, Inc. for an order pursuant to Rule 1.3(c) of the FRCP permitting Charles R. Work to appear pro hac vice . Affidavit of Charles R. Work in support of motion attached. No Return Date indicated. (db) (Entered: 02/27/2003)

03/11/2003 29 STIPULATION and ORDER: the discovery deadline is extended by sixty (60) days, to and including 8/20/03, and the status conference be extended to 8/22/03 at 11:00 a.m. . (signed by Judge Gerard E. Lynch) (db) (Entered: 03/13/2003)

03/14/2003 30 Memo endorsed on copy of motion; granting [28-1] motion for an order pursuant to Rule 1.3 (c) of the FRCP permitting Charles R. Work to appear pro hac vice. (signed by Judge Gerard E. Lynch); forwarded this document to the Attorney Admissions Clerk. (pl) (Entered: 03/17/2003)

03/27/2003 31 Case Management Plan: Joining of parties 6/2/03, amending of pleadings on 6/16/03; All Discovery cutoff 8/20/03; Deadline for filing of dispositive motions 9/30/03; Answering papers to be served and filed by 10/20/03; Reply papers to be served and filed by 10/31/03; Case management conference set for 11:00 8/22/03 (signed by Judge Gerard E. Lynch); (cd) (Entered: 03/28/2003)

04/10/2003 32 NOTICE OF MOTION by Quickie, L.L.C. for Mark F. Evens to appear pro hac vice on behalf of plaintiff ; for Jeffrey R. Gans to appear pro hac vice on behalf of plaintiff . Return Date 4/25/03. Affidavits of Shari H. Markowitz-Savitt, Jeffrey R. Gans, and Mrk F. Evens are attached. (tp) (Entered: 04/11/2003)

04/21/2003 33 NOTICE OF MOTION by Quickie, L.L.C. for an order pursuant to Rule 1.3(c) of the Local Civil Rules of the U.S.D.C. for the S.D.N.Y. admitting Lara A. Johnson to this court on a pro hac vice basis to represent plaintiff Quickie in this action . Return Date 5/7/03. (dle) (Entered: 04/23/2003)

04/25/2003 34 Memo endorsed on motion; granting [33-1] motion for an order pursuant to Rule 1.3(c) of the Local Civil Rules of the U.S.D.C. for the S.D.N.Y. admitting Lara A. Johnson to this court on a pro hac vice basis to represent plaintiff Quickie in this action. (signed by Judge Gerard E. Lynch) Copy of document sent to Atty. Admissions Clerk. (sb) (Entered: 04/25/2003)

05/05/2003 -- Memo endorsed on motion; granting [32-1] motion for Mark F. Evens to appear pro hac vice on behalf of plaintiff; granting [32-2] motion for Jeffrey R. Gans to appear pro hac vice on behalf of plaintiff. (signed by Judge Gerard E. Lynch); Sent orig. doc. to the Attorney Admission Clerk. (ae) Modified on 05/06/2003 (Entered: 05/06/2003)

06/19/2003 35 NOTICE OF MOTION by Medtronic, Inc. for Mehul R. Jani to appear pro hac vice ; Return Date not indicated; Attached is Affidavit in support; (dj) (Entered: 06/20/2003)

06/27/2003 36 AFFIDAVIT of Mehul R. Jani by Medtronic, Inc., Medtronic, Inc. in support of his application to be admitted to practice before this court and represent Medtronic pro hac vice. (dle) (Entered: 07/02/2003)

06/30/2003 -- Memo endorsed on motion; granting [35-1] motion for Mehul R. Jani to appear pro hac vice. Document sent to attorney admissions. (signed by Judge Gerard E. Lynch) (db) (Entered: 07/01/2003)

08/07/2003 -- CASHIER'S OFFICE REMARK on in the amount of \$75.00 paid on 8/7/03 Receipt # 481490. (jco) (Entered: 08/11/2003)

09/05/2003 37 STIPULATION and ORDER, that the dates set forth in the initial case management plan shall be extended as follows: dispositive motions-10/30/03; answer to dispositive motions-11/19/03; reply to dispositive motions-12/10/03; tentative trial-two weeks beginning 5/3/04; discovery is now closed, with the sole exception of three depositions previously by the parties for 8/27/03, 8/28/03 and 8/29/03 . (signed by Judge Gerard E. Lynch) (dle) (Entered: 09/09/2003)

10/30/2003 38 NOTICE OF MOTION by Medtronic, Inc., for an order granting partial summary judgment on damage claims for non-accused, non-infringing products . No Return Date. (kw) (Entered: 10/31/2003)

10/30/2003 39 RULE 56.1 STATEMENT filed by Medtronic, Inc. (kw) (Entered: 10/31/2003)

10/30/2003 40 DECLARATION of Stephen K. Shahida by Medtronic, Inc. in support of Re: [38-1] motion for an order granting partial summary judgment on damage claims for non-accused, non-infringing

products. (kw) (Entered: 10/31/2003)

10/30/2003 41 DECLARATION of Michael D. Strong by Medtronic, Inc. in support Re: [38-1] motion for an order granting partial summary judgment on damage claims for non-accused, non-infringing products. (kw) (Entered: 10/31/2003)

10/30/2003 42 DECLARATION of Jill Hennesen by Medtronic, Inc. in support Re: [38-1] motion for an order granting partial summary judgment on damage claims for non-accused, non-infringing products. (kw) (Entered: 10/31/2003)

10/30/2003 43 MEMORANDUM OF LAW by Medtronic, Inc. in support of [38-1] motion for an order granting partial summary judgment on damage claims for non-accused, non-infringing products. (kw) (Entered: 10/31/2003)

10/30/2003 44 NOTICE OF MOTION by Medtronic, Inc., for an order dismissing without prejudice all claims for relief, express or implied, under the parties' license agreement . No Return Date. (kw) (Entered: 10/31/2003)

10/30/2003 45 DECLARATION of Stephen K. Shahida by Medtronic, Inc. in support Re: [44-1] motion for an order dismissing without prejudice all claims for relief, express or implied, under the parties' license agreement. (kw) (Entered: 10/31/2003)

10/30/2003 46 MEMORANDUM OF LAW by Medtronic, Inc. in support of [44-1] motion for an order dismissing without prejudice all claims for relief, express or implied, under the parties' license agreement. (kw) (Entered: 10/31/2003)

11/17/2003 47 STIPULATION and ORDER, plaintiff's time to serve its opposition to dft's motions be extended to 11/26/03 , and dft's time to serve its reply to plaintiff's opposition to dft's motions be extended to 12/19/03 . (signed by Judge Gerard E. Lynch) (dle) (Entered: 11/19/2003)

11/26/2003 48 MEMORANDUM OF LAW in Opposition re: [44] Motion to Dismiss, [38] Motion for Summary Judgment. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 49 RESPONSE re: [39] Rule 56.1 Statement. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 50 RULE 56.1 STATEMENT. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 51 DECLARATION of Lara A. Johnson in Opposition re: [44] Motion to Dismiss, [38] Motion for Summary Judgment. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 52 AFFIRMATION of Susan B. McInerney in Support re: [51] Declaration in Opposition to Motion. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 53 EXHIBIT to Declaration of Lara A. Johnson Volume I Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M.(sac,) (Entered: 12/10/2003)

11/26/2003 54 EXHIBIT to Declaration of Lara A. Johnson Volume II. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:22 P.M.(sac,) (Entered: 12/10/2003)

11/26/2003 55 EXHIBIT to Declaration of Lara A. Johnson Volume III. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:22 P.M.(sac,) (Entered: 12/10/2003)

12/08/2003 56 ENDORSED LETTER addressed to Judge Gerard E. Lynch from Susan McInerney dated 11/25/03 re: Quickie requests an extension of the page limitation to 35 pages to file opposition to defendant Medtronic's two motions. So ordered. (Signed by Judge Gerard E. Lynch on 11/26/03) (kw,) (Entered: 12/23/2003)

12/19/2003 57 REPLY MEMORANDUM OF LAW in Support re: [44] Motion to Dismiss. Document filed by Medtronic, Inc.. (dle,) (Entered: 01/07/2004)

12/19/2003 58 DEFENDANT'S RESPONSE TO PLAINTIFF'S [50] Rule 56.1 Statement. Document filed by Medtronic, Inc.. (dle,) (Entered: 01/07/2004)

12/19/2003 59 DECLARATION of Stephen K. Shahida in Support re: [38] Motion for Summary Judgment. Document filed by Medtronic, Inc.. (dle,) (Entered: 01/07/2004)

12/19/2003 60 REPLY MEMORANDUM OF LAW in Support re: [38] Motion for Summary Judgment. Document filed by Medtronic, Inc.. (dle,) (Entered: 01/07/2004)

12/31/2003 61 Plaintiff's COUNTER STATEMENT TO [39] Rule 56.1 Statement. Document filed by Quickie, L.L.C.. (dle,) (Entered: 01/14/2004)

12/31/2003 62 DECLARATION of Eugene A. Grossi, MD: Document filed by Quickie, L.L.C.. (dle,) (Entered: 01/14/2004)

01/15/2004 63 OPINION and ORDER # 89572: because plaintiff makes no claim of breach of contract, defendants [44] motion to dismiss such a claims is DENIED. Because there are issues of fact for trial with respect to the intergrated functionality of the various products at issue, defendants [38] motion for partial summary judgment is DENIED. (Signed by Judge Gerard E. Lynch on 1/14/04) (db,) (Entered: 01/27/2004)

02/20/2004 64 NOTICE OF MOTION & MOTION for Grace M. Mora to Appear Pro Hac Vice.with attached affdvts of Susan B. McInerney and Grace M. Morain support. (NDB) Document filed by Quickie, L.L.C.. (pa,) (Entered: 02/23/2004)

03/15/2004 65 ORDER granting [64] MOTION for Grace M. Mora to Appear Pro Hac Vice filed by Quickie, L.L.C. (Signed by Judge Gerard E. Lynch on 3/10/04) (tp,). (Entered: 03/18/2004)

03/15/2004 -- Transmission to Attorney Admissions Clerk. Transmitted re: [65] Order, to the Attorney Admissions Clerk for updating of Attorney Information. (tp,) (Entered: 03/18/2004)

04/01/2004 66 NOTICE OF MOTION in Limine to preclude plttf from introducing at trial any testimony of Mr. Q. Todd Dickinson on any subject other than US Patent and trademark office practices and procedures. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004)

04/01/2004 67 NOTICE OF MOTION in Limine to preclude plttf from introducing at trial any testimony of evidence concerning prejudgement interest. Oral Argument Requested (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004)

04/01/2004 68 NOTICE OF MOTION in Limine to preclude plttf from introducing at trial any testimony of Dr. Wolf concerning infringement or licensing Oral Argument Requested. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004)

04/01/2004 69 NOTICE OF MOTION in Limine to preclude plttf from introducing at trial any expert testimony concerning infringement under the doctrine of equivalents. (Oral Argment Requested (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004)

04/01/2004 70 MEMORANDUM OF LAW in Support re: [69] MOTION in Limine. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004)

04/01/2004 71 MEMORANDUM OF LAW in Support re: [67] MOTION in Limine. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004)

04/01/2004 72 MEMORANDUM OF LAW in Support re: [66] MOTION in Limine. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004)

04/01/2004 73 MEMORANDUM OF LAW in Support re: [68] MOTION in Limine. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004)

04/01/2004 74 Verdict Form for Jury. Document filed by Quickie, L.L.C.. (dle,) (Entered: 04/05/2004)

04/01/2004 75 Proposed Voir Dire Questions. Document filed by Quickie, L.L.C..(dle,) (Entered: 04/05/2004)

04/01/2004 76 Proposed Jury Instructions. Document filed by Quickie, L.L.C..(dle,) (Entered: 04/05/2004)

04/01/2004 77 Medtronic, Inc.'s Proposed Jury Verdict Form. Document filed by Medtronic, Inc.. (dle,) (Entered: 04/05/2004)

04/01/2004 78 Proposed Voir Dire Questions. Document filed by Medtronic, Inc..(dle,) (Entered: 04/05/2004)

04/01/2004 79 Proposed Jury Instructions. Document filed by Medtronic, Inc..(dle,) (Entered: 04/05/2004)

04/01/2004 80 MOTION in Limine to exclude deft's use of the "advise of counsel" defense based upon Daniel Latham's E-mails. Document filed by Quickie, L.L.C. (cd,) (Entered: 04/05/2004)

04/01/2004 81 DECLARATION of Lara Johnson in Support re: [80] MOTION in Limine. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004)

04/01/2004 82 MEMORANDUM OF LAW in Support re: [80] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004)

04/01/2004 83 MOTION in Limine to exclude certain patents as exhibits and testimony relating to those patents. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004)

04/01/2004 84 MEMORANDUM OF LAW in Support re: [83] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004)

04/01/2004 85 MOTION in Limine to exclude testimony concerning deft's Fifth Affirmative Defense, purs to 35 USC 112. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004)

04/01/2004 86 DECLARATION of Lara Johnson in Support re: [85] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004)

04/01/2004 87 MEMORANDUM OF LAW in Support re: [85] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004)

| | | |
|------------|-----|--|
| 04/01/2004 | 88 | MOTION in Limine to exclude expert testimony of Dr. Wright on invalidity. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 89 | DECLARATION of Lara Johnson in Support re: [88] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 90 | MEMORANDUM OF LAW in Support re: [88] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 91 | MOTION in Limine to esclude extinsic evidence offered by Medtronic that contradicts the plain terms of the license agreement. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 92 | DECLARATION of Lara Johnson in Support re: [91] MOTION in Limine.. Document filed by Quickie, L.L.C. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 93 | MEMORANDUM OF LAW in Support re: [91] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 94 | MOTION in Limine to limit the expert testimony of Dr. Stong III. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 95 | DECLARATION of Lara Johnson in Support re: [94] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 96 | MEMORANDUM OF LAW in Support re: [94] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 97 | MOTION in Limine to exclude irrelevant and unduly prejudicial exhibits designated by deft. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 98 | DECLARATION of Lara Johnson in Support re: [97] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 99 | MEMORANDUM OF LAW in Support re: [97] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 100 | MOTION in Limine to exclude the testimony of Mr. Mossinghoff. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 101 | DECLARATION of Lara Johnson in Support re: [100] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 102 | MEMORANDUM OF LAW in Support re: [100] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 103 | Proposed Pretrial Order. Document filed by Medtronic, Inc., Quickie, L.L.C..(cd,) (Entered: 04/05/2004) |
| 04/02/2004 | 104 | Defendant's Objections To Plaintiff's Designations. Document filed by Medtronic, Inc.. (jmi,) (Entered: 04/05/2004) |
| 05/07/2004 | 105 | ORDER plaintiff's motion to admit Grace M. Mora pro hac vice was granted by the Court's Order dated 3/10/04. The Clerk of the Court is respectfully directed to close out this motion in all internal reports. So Ordered. (Signed by Judge Gerard E. Lynch on 5/5/04) (jco,) (Entered: 05/10/2004) |
| 09/02/2004 | 106 | ORDER that the motions (docket nos. 66-69, 80, 83, 85, 88, 91, 94, 97, and 100) shall be deemed withdrawn, without prejudice to their renewal if and when the case returns to the court's active docket. The clerk of court is directed to close out these motions in all internal reports. (Signed by Judge Gerard E. Lynch on 8/30/04) (dle,) (Entered: 09/07/2004) |
| 11/12/2004 | 107 | ORDER; the Clerk of the Court is respectfully directed to transfer this case to the suspense docket until further notice. The parties are directed to appear before the Court for a status conference on 3/4/05, at 11:00 a.m., and to advise the Court promptly of any decision in the parallel proceedings before the PTO. (Signed by Judge Gerard E. Lynch on 11/4/04) (pl,) (Entered: 11/17/2004) |
| 11/12/2004 | -- | Set/Reset Scheduling Order Deadlines: Status Conference set for 3/4/2005 11:00 AM before Judge Gerard E. Lynch. (pl,) (Entered: 11/17/2004) |

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**** SS 1: Results 1**
PRT SS 1 MAX 1 LEGALALL

1 / 1 PLUSPAT - @QUESTEL-ORBIT - image

Patent Number :

US6066160 A 20000523 [US6066160]

Title :

(A) Passive knotless suture terminator for use in minimally invasive surgery and to facilitate standard tissue securing

Patent Assignee :

(A) QUICKIE LLC (US)

Patent Assignee :

Quickie LLC, New York NY [US]

Inventor(s) :

(A) COLVIN STEPHEN (US); GROSSI EUGENE (US); KATZ ALLAN (US); ODDO PAUL (US)

Application Nbr :

US19808798 19981123 [1998US-0198087]

Priority Details :

US19808798 19981123 [1998US-0198087]

Intl Patent Class :

(A) A61B-017/04

EPO ECLA Class :

A61B-017/04K

US Patent Class :

ORIGINAL (O) : 606232000; CROSS-REFERENCE (X) : 606151000

Document Type :

Corresponding document

Citations :

US3143742; US3541591; US3859668; US3898999; US3976079; US3996623;
US4743253; US4823794; US4863460; US4955913; US5053047; US5071431;
US5074874; US5078731; US5116840; US5123913; US5163954; US5171251;
US5282832; US5306290; US5306296; US5391173; US5409499; US5445167;
US5474572; US5496336; US5531763; US5681351; US5776188

Publication Stage :

(A) United States patent

Abstract :

A suture securing apparatus comprising an apparatus body having a upper surface, a lower surface, an outer surface, and at least one aperture, the aperture having a longitudinal axis extending from the upper surface to the lower surface and defining an aperture surface, wherein a first longitudinal direction and a second longitudinal direction thereof each extends along the longitudinal axis in opposite directions, the aperture including an integral locking means for engaging a suture threaded therethrough.

Update Code :

2000-22

1 / 1 LGST - @EPO

Patent Number :

US6066160 A 20000523 [US6066160]

Application Number :

US19808798 19981123 [1998US-0198087]

Action Taken :

20030107 US/RR-A [+]
REQUEST FOR REEXAMINATION FILED
EFFECTIVE DATE: 20021125

20040720 US/FP-A [-]
EXPIRED DUE TO FAILURE TO PAY MAINTENANCE FEE
EFFECTIVE DATE: 20040523

20040803 US/RR-A [+]
REQUEST FOR REEXAMINATION FILED
EFFECTIVE DATE: 20040616
Update Code :
2004-34

1 / 1 CRXX - @CLAIMS/RRX

Patent Number :
6,066,160 A 20000523 [US6066160]

Patent Assignee :

Quickie LLC

Actions :

20021125 REEXAMINATION REQUESTED

ISSUE DATE OF O.G.: 20030107

REEXAMINATION REQUEST NUMBER: 90/006460

Medtronic, Inc., Minneapolis, MN, Attn: Daniel W. Latham

20040616 REEXAMINATION REQUESTED

ISSUE DATE OF O.G.: 20040803

REEXAMINATION REQUEST NUMBER: 90/007016

Kenneth L. Cage, Washington, DC

20040720 EXPIRED (20040523)

Session finished: 04 APR 2005 Time 19:07:13

QUESTEL.ORBIT thanks you. Hope to hear from you again soon.

Time of Request: April 04, 2005 12:46 PM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
6066160 or 6,066,160

QUICKIE, LLC, Plaintiff, -v- MEDTRONIC, INC., Defendant.

02 Civ. 1157 (GEL)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

226 F. Supp. 2d 481; 2002 U.S. Dist. LEXIS 22166

September 30, 2002, Decided
October 2, 2002, Filed

SUBSEQUENT HISTORY: Partial summary judgment denied by, Motion denied by Quickie v. Medtronic, Inc., 2004 U.S. Dist. LEXIS 489 (S.D.N.Y., Jan. 14, 2004)

DISPOSITION: [**1] Defendant's construction of disputed terms rejected and plaintiff's construction adopted.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff assignee of the inventors filed a patent infringement suit claiming that defendant alleged infringer, with whom it previously entered into an agreement for the mutual exchange of confidential information concerning the development, manufacture, and marketing of certain technologies, infringed the '160 patent. The suit was before the court on claim construction.

OVERVIEW: The '160 patent protected an invention designed to hold sutures in place without requiring a surgeon to tie or knot the sutures. At the most basic level, the parties were fighting about the scope of the patent. The infringer would have had the court limit the invention to a device with at least one, "fully enclosed" aperture and with narrow limitations on shape and spatial orientation. The assignee sought the broadest construction of the claims reasonable. The assignee went too far in its assertion that the meaning of the term "aperture" was "unqualified," or encompassed "any three-dimensional opening, space or channel." However, none of the intrinsic evidence warranted as narrow a

definition of "aperture" as the one offered by the infringer. An "aperture" need not by definition be "fully enclosed" in the sense argued by the infringer, but rather included any form of opening. The court adopted the assignee's construction, with the limitation that "aperture" encompassed not any opening, but rather one that created a spatial relationship between the movable cam and aperture walls, as described in the patent, that ensured capture of the cam within the aperture.

OUTCOME: The infringer's construction of the disputed terms was rejected, and the assignee's construction was adopted.

LexisNexis(R) Headnotes

Patent Law > Subject Matter > Products > Manufactures

Patent Law > Claims & Specifications > Definiteness > General Overview

[HN1] A patent must describe the exact scope of an invention and its manufacture, as defined by the claims. Construction of a patent is exclusively within the province of the court. The court's purpose is to determine what the words in the claim mean.

Patent Law > Infringement Actions > Claim Interpretation > Fact & Law Issues

Patent Law > Claims & Specifications > Enablement Requirement > General Overview

[HN2] A simple patent case has two elements, construing the patent and determining whether infringement

occurred. The first is a question of law, to be determined by the court, construing the letters-patent, and the description of the invention and specification of claim annexed to them. In undertaking that task, it is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history. The court should look to the words of the claims themselves giving them their ordinary and customary meaning unless clearly stated otherwise. The specification is the single best guide to the meaning of a disputed term. If intrinsic evidence resolves disputes over meaning, it is improper to look at extrinsic evidence, although the court can hear it as long as no weight is later given to that evidence. Extrinsic evidence may be used to help the court understand the underlying technology.

COUNSEL: For Quickie, LLC, PLAINTIFF: Todd S Sharinn, Paul J Sutton, Greenberg Traurig, LLP, New York, NY USA.

For Medtronic, Inc, DEFENDANT: Chryssa V Valletta, Cairo, NY USA.

For Medtronic, Inc, COUNTER-CLAIMANT: Chryssa V Valletta, Cairo, NY USA.

For Quickie, LLC, COUNTER-DEFENDANT: Todd S Sharinn, Paul J Sutton, Greenberg Traurig, LLP, New York, NY USA.

JUDGES: GERARD E. LYNCH, United States District Judge.

OPINIONBY: GERARD E. LYNCH

OPINION:

[*481] ORDER

GERARD E. LYNCH, District Judge:

On May 23, 2000, the Patent and Trademark Office issued to Quickie, LLC ("Quickie"), as assignee of the inventors, United States Letters Patent No. 6,066,160 (" '160 Patent"), entitled "Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Suturing." Quickie filed this patent infringement action on February 13, 2002, claiming that Medtronic, Inc. ("Medtronic"), with whom it had previously entered into an agreement for the "mutual exchange of confidential information concerning the development, manufacture, and marketing of certain technologies" (Pl. Mem. [*2] at 1), infringed the '160 Patent by selling a device for retaining sutures. Having

filed briefs and appeared for a Markman hearing on September 4, 2002, to discuss the key disputed terms (aperture, upper/ lower/ outer surfaces, first and second longitudinal directions, and cavity), the action is now before the Court on claim construction.

[HN1] "[A] patent must describe the exact scope of an invention and its manufacture," as defined by the claims. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 373, 134 L. Ed. 2d 577, 116 S. Ct. 1384 [*482] (1996). "Construction of a patent ... is exclusively within the province of the court." *Id.* at 372. The Court's purpose is to determine "what the words in the claim mean." *Id.* at 374. [HN2] A simple patent case has two elements, "construing the patent and determining whether infringement occurred." *Id.* at 385. "The first is a question of law, to be determined by the court, construing the letters-patent, and the description of the invention and specification of claim annexed to them." *Id.* (internal citation omitted). In undertaking that task, "it is well-settled that, in interpreting [*3] an asserted claim, the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Vitronics Corp. v. Conception Corp.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The Court should "look to the words of the claims themselves" giving them "their ordinary and customary meaning" unless clearly stated otherwise. *Id.*; see also *Dow Chem. Co. v. Sumitomo Chem. Co. Ltd.*, 257 F.3d 1364, 1372 (Fed. Cir. 2001) (disputed terms are given "their ordinary and accustomed meaning as understood by one of ordinary skill in the art"). The specification "is the single best guide to the meaning of a disputed term." *Vitronics*, 90 F.3d at 1582. If intrinsic evidence resolves disputes over meaning, it is improper to look at extrinsic evidence, although the court can hear it as long as no weight is later given to that evidence. *Id.* at 1583-84. Extrinsic evidence may be used "to help [the court] understand the underlying technology." *Id.* at 1585.

This Order defines the disputed terms pursuant to the legal standard stated [*4] above. The '160 Patent protects an invention designed to hold sutures in place without requiring a surgeon to tie or knot the sutures. ('160 Patent, col. 1, lines 10-14.) Although other devices exist as "alternatives to conventional knot-tying techniques" (col. 2, lines 27-33), the '160 patent criticizes the prior art for flaws such as requiring "pinpoint accuracy" (col. 2, lines 34-44) or for using "small loose parts ... [that are] easy to drop and lose" (col. 2, lines 58-64). The device disclosed in the '160 Patent claims to "offer ... ease and versatility for terminating sutures and thus securely locking tissues and/ or prosthetics in place" that prior devices cannot. (Col. 3, line 66-col. 4, line 2.)

As was readily apparent during the Markman hearing, the parties' dispute is predominately about the meaning of the word "aperture." Minor disputes also exist as to the meanings of the terms "cavity," "longitudinal directions," and "upper, lower, and outer surfaces." At the most basic level, the parties are fighting about the scope of the patent. Medtronic would have the Court limit the invention to a device with at least one, "fully enclosed" aperture and with narrow limitations [**5] on shape and spacial orientation. Quickie seeks "the broadest construction of these claims reasonable." (Pl. Mem. at 13.)

There are two independent claims at issue, claims 13 and 33. Taking claim 13 as representative of the use of the words in the patent, the invention is "an apparatus body having a upper surface, a lower surface, an outer surface, and at least one aperture, the aperture having a longitudinal axis extending from the upper surface to the lower surface and defining an aperture surface, wherein a first longitudinal direction and a second longitudinal direction thereof each extends along the longitudinal axis in opposite directions." (Col. 15, lines 5-12) (emphasis added). Moreover, the aperture has a "middle portion [with] a first surface and second surface opposing each other and is wider than either of the upper portion and the lower portion and forms a cavity therein; and (b) a movable cam member [is] disposed in [*483] the middle portion of the aperture." (Col. 15, lines 20-25.)

Medtronic describes the Quickie invention as "a disk-shaped body having at least one hole ('aperture') through it, with a 'cavity' located inside the body and in which [**6] is housed a movable 'cam member' that alternately allows and restricts passage of a suture through the hole (aperture) in the body," and points to Figs. 5 and 7 in the patent. (Def. Reply at 1.) Medtronic argues that this embodiment of the device is "the only structure shown and described in the '160 patent that corresponds to the asserted claims." (Id. at 2.) Consistent with this structure, defendant argues that (1) the aperture must be "fully enclosed," meaning a hole through the device as opposed to any other opening, such as a crenelation, (2) the device must be disk-shaped with parallel upper and lower surfaces, (3) the cavity must be fully enclosed within the aperture, and (4) the longitudinal directions must run north-south. Quickie, in contrast, argues that the drawings in Figs. 5 and 7 merely represent one example of a device embodying the patented invention, and point to case law holding that the "law does not require the impossible. Hence it does not require that an applicant describe in his specification every conceivable and possible future embodiment of his invention." *SRI Int'l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985). [**7] (See also Pl. Reply at 2-3.)

To support its narrow construction, Medtronic focuses on Figs. 5 and 7 and on language in the claims describing the movable cam member as "captured" within the aperture. (See, e.g., Sept. 4, 2002, Tr. at 43.) Emphasizing that the cam member must be "disposed in the middle portion of the aperture" (col. 15, lines 24-25) (emphasis added), or "therein" (col. 18, lines 9-13) (emphasis added), or "captured within the cavity, since the largest dimension of the cam member is larger than either end opening of the aperture" (col. 11, lines 15-17); and that the main criticism of the prior art was harm caused by the cam member falling out (see, e.g., col. 2, lines 58-67, col. 3, lines 25-34, col. 3, lines 36-48, and col. 3, lines 52-65), Medtronic correctly argues that the aperture cannot be "just any opening" (Tr. at 45).

Because these functional constraints are essential to the claimed invention, Quickie goes too far in its assertion that the meaning of the term "aperture" is "unqualified," or encompasses "any three-dimensional opening, space or channel" (Tr. at 10). However, none of the intrinsic evidence warrants as narrow a definition [**8] of "aperture" as the one offered by Medtronic. An "aperture" need not by definition be "fully enclosed" in the sense argued by Medtronic, but rather includes any form of opening. The only justification for reading the term more narrowly here is that the very essence of the invention described requires a spatial configuration of the various parts that will "capture[]" the cam within the device and prevent its falling out. Such configurations can be of various types, and still fit comfortably within the language of the claims. Therefore, there is no reason in evidence intrinsic to the patent to require, as Medtronic suggests, that the "aperture" be "fully enclosed." The patent fairly contemplates and covers any shape with the requisite "spatial relationship[s]" (col. 11, line 20) between the cam member, cavity, and aperture, and is not limited to the embodiment shown in Figs. 5 and 7, so long as the cam is contained within the device as a result of the spatial configuration of the aperture.

As to the remaining disputes about the shape of the patented device, Medtronic's construction is again too narrow. Medtronic would limit the apparatus to a [*484] three-dimensional, disk shape with [**9] parallel upper and lower surfaces and with an aperture going through the entire device running in a north-south direction. But the patent requires neither a disk shape nor parallel upper and lower surfaces. It simply mandates a shape with three surfaces (upper, lower, and outer). The terms "first and second longitudinal directions" mean simply opposing directions, and not anything more specific, such as 180-degree angles. A "cavity" is simply an opening in the aperture -- regardless of whether the aperture is fully enclosed -- which houses the cam

member and whose width is larger than the opening of aperture to prevent the cam member from falling out.

CONCLUSION

The Court rejects defendant's construction of the disputed terms and adopts plaintiff's construction, with the limitation that "aperture" encompasses not any opening, but rather one that creates a spatial relationship between the movable cam and aperture walls, as

described in the patent, that ensures capture of the cam within the aperture.

SO ORDERED.

Dated: New York, New York

September 30, 2002

GERARD E. LYNCH

United States District Judge

Time of Request: April 04, 2005 12:45 PM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
6066160 or 6,066,160

QUICKIE, LLC, Plaintiff, -v- MEDTRONIC, INC., Defendant.

02 Civ. 1157 (GEL)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

2004 U.S. Dist. LEXIS 489

**January 14, 2004, Decided
January 15, 2004, Filed**

PRIOR HISTORY: Quickie, LLC v. Medtronic, Inc.,
226 F. Supp. 2d 481, 2002 U.S. Dist. LEXIS 22166
(S.D.N.Y., 2002)

DISPOSITION: [*1] Defendant's motion separately to
dismiss and for partial summary judgment denied.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff inventor's
assignee filed a patent infringement action claiming that
defendant corporation, with whom it had previously
entered into an agreement, infringed the patent by selling
a device for retaining sutures. The corporation moved
separately: (1) to dismiss all claims for relief, express or
implied, under the parties' license agreement; and (2) for
partial summary judgment on damage claims for non-
accused, non-infringing products.

OVERVIEW: The patent at issue was issued regarding
a passive knotless suture terminator used in cardiac
surgery. The corporation moved to dismiss "implied"
claims that both parties agreed had not been made. The
court held that the corporation's motion to dismiss a non-
existent contract count was denied because the assignee
authoritatively disavowed any intention to assert that the
agreement was breached. The corporation's vague and
premature effort to preclude any testimony about the
"scope and status" of the agreement was also denied.
Further, because there were issues of fact for trial with
respect to the integrated functionality of the various
products at issue, the corporation's motion for partial

summary judgment was denied. The corporation failed to
show, as to any of the instruments, that no reasonable
factfinder could conclude that its "Octopus System" was
a single functional unit, or a set of components
"analogous to" such a single unit, that functioned
together to achieve a desired result in such a way that its
entire market value derived from the use of the device
that the assignee claimed infringed its patent.

OUTCOME: The corporation's motions were denied.

LexisNexis(R) Headnotes

Patent Law > Subject Matter > Products > Machines
Patent Law > Remedies > Damages > General
Overview

[HN1] Under the "entire market value rule," a patentee
may seek damages on unpatented components sold with
a patented apparatus, if the patented apparatus was of
such paramount importance that it substantially created
the value of the component part. The rule has typically
been applied to include in the compensation base
unpatented components of a device when the unpatented
and patented components are physically part of the same
machine. The rule may be applied to include physically
separate unpatented components normally sold with the
patented components, but only where the unpatented and
patented components together were considered to be
components of a single assembly or parts of a complete
machine, or together constituted a functional unit.

Patent Law > Remedies > Damages > General Overview

[HN2] The "entire market value rule" does not apply to products that are sold together for marketing reasons, rather than because they essentially function together.

COUNSEL: Susan McInerney, Thelen Reid & Priest LLP, New York, NY (Mark F. Evens, Jeffrey R. Gans, Grace Mora, Lara Johnson, Thelen Reid & Priest LLP, Washington, DC, of counsel) for plaintiff Quickie, LLC.

Chryssa V. Valletta, McDermott, Will & Emery, New York, NY (Raphael V. Lupo, Brian E. Ferguson, Stephen K. Shahida, McDermott, Will & Emery, Washington, DC, of counsel) for defendant Medtronic, Inc.

JUDGES: GERARD E. LYNCH, United States District Judge.

OPINIONBY: GERARD E. LYNCH

OPINION:

OPINION AND ORDER

GERARD E. LYNCH, District Judge:

On May 23, 2000, the Patent and Trademark Office issued to Quickie, LLC ("Quickie"), as assignee of the inventors, United States Letters Patent No. 6,066,160 ("160 Patent"), entitled "Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Suturing." Quickie filed this patent infringement action on February 13, 2002, claiming that Medtronic, Inc. ("Medtronic"), with whom it had previously [*2] entered into an agreement for the "mutual exchange of confidential information ... regarding the development, manufacture, and marketing of technologies in the field of heart valve surgery and repair" (Def. Mem. at 2), infringed the '160 Patent by selling a device for retaining sutures. The case is scheduled for trial on May 3, 2004.

Medtronic now moves separately (1) to dismiss "all claims for relief, express or implied, under the parties' license agreement," and (2) for partial summary judgment "on damage claims for non-accused, non-infringing products." The motions will be denied.

DISCUSSION

I. Motion to Dismiss

Medtronic moves to "dismiss" "implied" claims that both parties agree have not been made. The complaint contains no claims for breach of contract, and Quickie represents to the Court that it has no intention of trying such a claim, or of offering testimony that Medtronic

breached the parties' now terminated agreement. (Pl. Opp. 13.)

The motion, in reality, is a motion in limine that asks the Court to exclude evidence at trial. Exactly what evidence Medtronic would like excluded, however, is far from clear. Its initial memorandum, couched as a motion to dismiss, [*3] the phantom "contract" claim, pointed to only one potentially prejudicial evidentiary submission: arguing that Quickie sought "to implicitly present a breach of contract claim or theory to the jury ... in order to evoke in the jury sympathy, or a sense of wrong to be righted" (Def. Mem. 1), Medtronic asserted that "Quickie's experts [may] not testify that Medtronic breached the license agreement." (Def. Mem. 7.) After Quickie disclaimed any intention of offering such testimony, Medtronic advised in its reply brief that Quickie should be prevented "from arguing the *scope* and *status* of the Agreement at trial." (Def. R. Mem. 1; emphasis in original.) Though Medtronic helpfully italicizes these words, it completely fails to indicate what it means by them. Medtronic concedes that "the parties are free to point to the Agreement ... as an example of a comparable license covering medical technology between the parties, and opine on the royalty rate in the Agreement and its import (if any) on a royalty calculation in this case." (Def. R. Mem. 3.) How the parties can debate the comparability of the Agreement to a hypothetical license for the allegedly infringing device without discussing [*4] the scope of the Agreement is left unexplained. Nor does Medtronic explain how a jury is to understand the relevance or irrelevance of the Agreement without knowing its status, to wit, terminated.

Moreover, contrary to Medtronic's argument, the fact that the parties had a prior relationship that arguably involved the very technology at issue in this case is plainly relevant to the issue of willful infringement. Medtronic is correct that it cannot have willfully infringed Quickie's patent before the patent was issued. (Def. R. Mem. 5, citing *State Industries, Inc. v. A. O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985).) But evidence that Medtronic had access to plaintiff's claimed invention even before the patent was obtained, and was aware of the patent or the plan to obtain it, is clearly relevant to assessing the willfulness of Medtronic's behavior *after* the patent was issued. To see why, one need only hypothesize a comparable action against an alleged infringer who claimed never to have heard of Quickie or its technology. A claim of willful infringement against such a defendant would be impossible, and evidence that the defendant *had* in fact had access [*5] to the technology and was aware of the intention to seek a patent would significantly bolster plaintiff's case.

The Court neither has nor expresses any opinion about whether the device in question was in fact within the scope of the Agreement or whether the accused product in fact infringes plaintiff's patent, let alone whether any infringement was willful. These are issues of fact for trial. Nor is this the time for definitive resolution of the scope of any evidence that will be permitted on this subject, or the fairness of any argument that might be drawn from such evidence. All that the Court holds is that Medtronic's motion to dismiss a non-existent contract count is denied; that plaintiff has authoritatively disavowed any intention to assert that the Agreement was breached, and will be held to that disavowal; and that Medtronic's vague and premature effort to preclude any testimony about the "scope and status" of the Agreement is denied.

II. Motion for Partial Summary Judgment

The accused infringing device (whether styled as a "suture guide," as defendant would have it, or as a "suture holding insert," as plaintiff insists, see Pl. Mem. 2 n. 6) is intended to be [*6] used in connection with other medical instruments manufactured by Medtronic in certain forms of cardiac surgery. It is undisputed that these other instruments were developed and marketed by Medtronic before either Quickie obtained its patent or Medtronic developed the allegedly infringing device. It is evident that these instruments perform different functions than Quickie's patented idea, and Quickie does not contend that these instruments in themselves infringe the patent.

Nevertheless, Quickie argues both (a) that it should be entitled to royalties on Medtronic's sales of various of these instruments on the "entire market value" theory; and (b) that the utility of its device in enhancing the value of Medtronic's other instruments is relevant to calculating the hypothetical royalty rate that would be the measure of recovery here. Medtronic does not appear to dispute the latter point, but argues vigorously, citing *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 (Fed. Cir. 1995) (*en banc*), that as a matter of law, even if Quickie can establish that the allegedly offending device infringed its patents, it may not recover royalties on the sale of the separate non-infringing [*7] instruments with which the suture guide/insert is sold. (Def. Mem. 20 ff.)

[HN1] Under the "entire market value rule," a patentee may seek damages on unpatented components sold with a patented apparatus, if the patented apparatus "was of such paramount importance that it substantially created the value of the component part." *Marconi Wireless Telegraph Co. v. United States*, 99 Ct. Cl. 1, 53 USPQ 246, 250 (Ct. Cl. 1942), *aff'd in part and vacated in part*, 320 U.S. 1, 87 L. Ed. 1731, 63 S. Ct. 1393, 99 Ct. Cl. 815, 1943 Dec. Comm'n Pat. 781 (1943). In *Rite-Hite*,

the *en banc* Federal Circuit noted that the rule "has typically been applied to include in the compensation base unpatented components of a device when the unpatented and patented components are physically part of the same machine." 56 F.3d at 1549. The rule may be applied to include "physically separate unpatented components normally sold with the patented components," but only where "the unpatented and patented components together were considered to be components of a single assembly or parts of a complete machine," or "together constituted a functional unit." *Id.* at 1550.

Medtronic argues that Quickie will be unable to meet this test [*8] as to the various instruments at issue on this motion. Medtronic argues that there is no functional relationship between the unchallenged instruments and the accused suture guide/insert, since the former can be sold and used without the allegedly infringing device. (Def. Mem. 20.) Supporting its position with elaborate descriptions, color schematic drawings, and digital video of beating heart surgery using the devices, Medtronic points out that several of its instruments (the Octopus, Starfish and Urchin) are essentially designed to stabilize and hold in position portions of the heart during surgery, permitting operations to be conducted on a beating heart (rather than with the heart stopped and its functions taken over by artificial heart and lung machines). Another Medtronic device (marketed under the brand name OctoBase) is a "sternal retractor," used to spread the breastbone apart to permit freer access to the heart during surgery. The Octopus instrument is then mounted on the OctoBase, as the name of the latter implies.

The accused product is designed to work with the OctoBase "to secure deep retraction sutures" used to position the heart during the surgery. (Def. Mem. 15.) The [*9] suture guide is separately sold (albeit frequently "bundled" with other products in package deals), and designed to be inserted into the OctoBase, replacing the parts that are sold as part of that instrument. The challenged device cannot be used with a non-Medtronic sternal retractor, but the Octopus and related products can be mounted on a non-Medtronic retractor. (*Id.* at 14-15.) Medtronic argues that the Octopus is intended to be used to immobilize small areas of the heart, and the Urchin/Starfish devices to position the heart in a desired direction, and that these functions can be performed regardless of what model of sternal retractor is used. Similarly, the OctoBase product can be used to open the chest with or without the challenged suture guide product. (Def. Mem. 22 and exhibits there cited.) Thus, Medtronic claims, the accused product cannot be treated as part of a "functional unit" with the other instruments, as required by *Rite-Hite*.

The functionality of the various products, however, is irreducibly a question of fact. Medtronic essentially asks that the Court, without having heard expert testimony or hearing the claims subjected to cross-examination, decide that [*10] no reasonable jury could determine that the challenged product acts as part of an integrated system or a system "analogous to a single functioning unit." Rite-Hite, 56 F.3d at 1550. Quickie points out that the components of the entire "Octopus System" have been designed to work together and are sold as a system. While the Octopus was developed earlier and the Starfish/Urchin instruments later, the OctoBase was introduced along with the accused suture guide device, and is described by Medtronic itself as "a reusable stainless steel sternal retractor configured with removable, single use inserts designed for securing deep pericardial sutures during beating heart surgical procedures." (Decl. of Lara A. Johnson, executed Nov. 25, 2003, Ex. 28 at MEDQ 02231.) In other words, the suture guide/insert is described in Medtronic's own literature as a disposable insert for the OctoBase, specifically designed to be used with that instrument as a single unit; a reasonable fact-finder could conclude that the OctoBase and the suture guide act as a single unit, with the latter component sold separately and not integrated as a single machine in large part because of its disposable [*11] "single use" quality.

The Octopus and Starfish/Urchin instruments appear less integrally connected to the suture guide/insert. They can apparently be used with other sternal retractors, for example, and the suture guide/insert is not integrated directly into those instruments, as it is into the OctoBase. Quickie argues, however, that the entire "Octopus System" is designed to work together as a functional unit to achieve a particular desired result - optimal beating heart surgery - in a way that is a desirable advance on previous products via a complete system. Cf. Bose Corp. v. JBL, Inc., 274 F.3d 1354, 1361 (Fed. Cir. 2001) ("entire market value rule" applies because the accused device operated "with other components of loudspeakers as a single functioning unit to provide the *desired audible performance*") (emphasis added). In effect, they argue that while the various parts could be used separately, Medtronic designed and markets the "system" as an integrated unit, such that only by using the entire device can a heart surgeon achieve the desired optimal performance. Quickie supplements this showing by presenting expert testimony from surgeons who testify variously [*12] that they would never use Medtronic's other products without the OctoBase and its challenged suture guide/inserts; that they have never seen the OctoBase used without the challenged devices; and that

there is "no good way" of performing certain surgeries without the complete system. Quickie also offers evidence that the vast majority of sales of all the instruments in question (especially the OctoBase) were made to customers who also purchased the accused device. (See evidence cited at Pl. Mem. 23-25.)

Rite-Hite suggests caution about the interpretation of some of this evidence. [HN2] The "entire market value rule" does not apply to products that are sold together for "marketing reasons, not because they essentially function[] together." 56 F.3d at 1551. Medtronic argues that its various instruments work separately, to perform separate functions, and that it merely markets these devices together in various custom packages for surgeons who can pick and choose among the various components. Good salesmanship and the preference of users to construct systems from components offered by the same manufacturer could account for the sales statistics. Were the Court sitting [*13] as a factfinder based on the cold record before it, Medtronic's argument might seem fairly persuasive as to the Octopus and Starfish/Urchin products, rather less so as to the OctoBase.

But the Court is not in the position of factfinder. Its role here is to decide whether, on the limited summary judgment record presented, Medtronic has shown as to any of the instruments that no reasonable factfinder could conclude that its "Octopus System" is a single functional unit, or a set of components "analogous to" such a single unit, that function together to achieve a desired result in such a way that its entire market value derives from the use of the device that Quickie claims infringes its patent. While Quickie's proposition seems dubious as to at least some of the instruments in question, the Court cannot say at this stage that Quickie may not present its evidence to the factfinder in a full trial.

CONCLUSION

Because plaintiff makes no claim of breach of contract, defendant's motion to dismiss such claim is denied. Because there are issues of fact for trial with respect to the integrated functionality of the various products at issue, defendant's motion for partial summary judgment [*14] is denied.

SO ORDERED.

Dated: January 14, 2004

GERARD E. LYNCH

United States District Judge

Time of Request: April 04, 2005 12:48 PM EDT

Research Information:

News, All (English, Full Text)
6066160 or 6,066,160

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New York Law Journal

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LENGTH: 2536 words

HEADLINE: Decision of Interest;
United States District Court, Southern New York;
Fact Issues Exist as to Whether Product Infringes Patent and Whether Any Infringement Was Willful

BODY:

Judge Lynch

Quickie, LLC. v. Medtronic, Inc. - On May 23, 2000, the Patent and Trademark Office issued to Quickie, LLC ["Quickie"], as assignee of the inventors, United States Letters Patent No. 6,066,160 ["'160 Patent"], entitled "Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Suturing." Quickie filed this patent infringement action on February 13, 2002, claiming that Medtronic, Inc. ["Medtronic"], with whom it had previously entered into an agreement for the "mutual exchange of confidential information ... regarding the development, manufacture, and marketing of technologies in the field of heart valve surgery and repair" [Def. Mem. at 2], infringed the '160 Patent by selling a device for retaining sutures. The case is scheduled for trial on May 3, 2004.

Medtronic now moves separately [1] to dismiss "all claims for relief, express or implied, under the parties' license agreement," and [2] for partial summary judgment "on damage claims for non-accused, non-infringing products." The motions will be denied.

Discussion

I. Motion to Dismiss

Medtronic moves to "dismiss" "implied" claims that both parties agree have not been made. The complaint contains no claims for breach of contract, and Quickie represents to the Court that it has no intention of trying such a claim, or of offering testimony that Medtronic breached the parties' now terminated agreement. [Pl. Opp. 13.]

The motion, in reality, is a motion in limine that asks the Court to exclude evidence at trial. Exactly what evidence Medtronic would like excluded, however, is far from clear. Its initial memorandum, couched as a motion to dismiss the phantom "contract" claim, pointed to only one potentially prejudicial evidentiary submission: arguing that Quickie sought "to implicitly present a breach of contract claim or theory to the jury ... in order to evoke in the jury sympathy, or a sense of wrong to be righted" [Def. Mem. 1], Medtronic asserted that "Quickie's [e]xperts [may] not [t]estify [t]hat Medtronic [b]reached [t]he [l]icense [a]greement." [Def. Mem. 7.] After Quickie disclaimed any intention of offering such testimony, Medtronic advised in its reply brief that Quickie should be prevented "from arguing the scope and status of the Agreement at trial." [Def. R. Mem. 1; emphasis in original.] Though Medtronic helpfully italicizes these words, it completely fails to indicate what it means by them. Medtronic concedes that "the parties are free to point to the Agreement ... as an example of a comparable license covering medical technology between the parties, and opine on the royalty rate in the Agreement and its import [if any] on a royalty calculation in this case." [Def. R. Mem. 3.] How the parties can debate the comparability of the Agreement to a hypothetical license for the allegedly infringing device

without discussing the scope of the Agreement is left unexplained. Nor does Medtronic explain how a jury is to understand the relevance or irrelevance of the Agreement without knowing its status, to wit, terminated.

Moreover, contrary to Medtronic's argument, the fact that the parties had a prior relationship that arguably involved the very technology at issue in this case is plainly relevant to the issue of willful infringement. Medtronic is correct that it cannot have willfully infringed Quickie's patent before the patent was issued. [Def. R. Mem. 5, citing *State Industries, Inc. v. A. O. Smith Corp.*, 751 F.2d 1226, 1236 [Fed. Cir. 1985].] But evidence that Medtronic had access to plaintiff's claimed invention even before the patent was obtained, and was aware of the patent or the plan to obtain it, is clearly relevant to assessing the willfulness of Medtronic's behavior after the patent was issued. To see why, one need only hypothesize a comparable action against an alleged infringer who claimed never to have heard of Quickie or its technology. A claim of willful infringement against such a defendant would be impossible, and evidence that the defendant had in fact had access to the technology and was aware of the intention to seek a patent would significantly bolster plaintiff's case.

The Court neither has nor expresses any opinion about whether the device in question was in fact within the scope of the Agreement or whether the accused product in fact infringes plaintiff's patent, let alone whether any infringement was willful. These are issues of fact for trial. Nor is this the time for definitive resolution of the scope of any evidence that will be permitted on this subject, or the fairness of any argument that might be drawn from such evidence. All that the Court holds is that Medtronic's motion to dismiss a non-existent contract count is denied; that plaintiff has authoritatively disavowed any intention to assert that the Agreement was breached, and will be held to that disavowal; and that Medtronic's vague and premature effort to preclude any testimony about the "scope and status" of the Agreement is denied.

II. Motion for Partial Summary Judgment

The accused infringing device [whether styled as a "suture guide," as defendant would have it, or as a "suture holding insert," as plaintiff insists, see Pl. Mem. 2 n. 6] is intended to be used in connection with other medical instruments manufactured by Medtronic in certain forms of cardiac surgery. It is undisputed that these other instruments were developed and marketed by Medtronic before either Quickie obtained its patent or Medtronic developed the allegedly infringing device. It is evident that these instruments perform different functions than Quickie's patented idea, and Quickie does not contend that these instruments in themselves infringe the patent.

Nevertheless, Quickie argues both [a] that it should be entitled to royalties on Medtronic's sales of various of these instruments on the "entire market value" theory; and [b] that the utility of its device in enhancing the value of Medtronic's other instruments is relevant to calculating the hypothetical royalty rate that would be the measure of recovery here. Medtronic does not appear to dispute the latter point, but argues vigorously, citing *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 [Fed. Cir. 1995] [en banc], that as a matter of law, even if Quickie can establish that the allegedly offending device infringed its patents, it may not recover royalties on the sale of the separate non-infringing instruments with which the suture guide/insert is sold. [Def. Mem. 20 ff.]

Under the "entire market value rule," a patentee may seek damages on unpatented components sold with a patented apparatus, if the patented apparatus "was of such paramount importance that it substantially created the value of the component part." *Marconi Wireless Telegraph Co. v. United States*, 53 USPQ 246, 250 [Ct. Cl. 1942], *aff'd* in part and vacated in part, 320 U.S. 1 [1943]. In *Rite-Hite*, the en banc Federal Circuit noted that the rule "has typically been applied to include in the compensation base unpatented components of a device when the unpatented and patented components are physically part of the same machine." 56 F.3d at 1549. The rule may be applied to include "physically separate unpatented components normally sold with the patented components," but only where "the unpatented and patented components together were considered to be components of a single assembly or parts of a complete machine," or "together constituted a functional unit." *Id.* at 1550.

Medtronic argues that Quickie will be unable to meet this test as to the various instruments at issue on this motion. Medtronic argues that there is no functional relationship between the unchallenged instruments and the accused suture guide/insert, since the former can be sold and used without the allegedly infringing device. [Def. Mem. 20.] Supporting its position with elaborate descriptions, color schematic drawings, and digital video of beating heart surgery using the devices, Medtronic points out that several of its instruments [the Octopus, Starfish and Urchin] are essentially designed to stabilize and hold in position portions of the heart during surgery, permitting operations to be conducted on a beating heart [rather than with the heart stopped and its functions taken over by artificial heart and lung machines]. Another Medtronic device [marketed under the brand name OctoBase] is a "sternal retractor," used to spread the breastbone

apart to permit freer access to the heart during surgery. The Octopus instrument is then mounted on the OctoBase, as the name of the latter implies.

The accused product is designed to work with the OctoBase "to secure deep retraction sutures" used to position the heart during the surgery. [Def. Mem. 15.] The suture guide is separately sold [albeit frequently "bundled" with other products in package deals], and designed to be inserted into the OctoBase, replacing the parts that are sold as part of that instrument. The challenged device cannot be used with a non-Medtronic sternal retractor, but the Octopus and related products can be mounted on a non-Medtronic retractor. [Id. at 14-15.] Medtronic argues that the Octopus is intended to be used to immobilize small areas of the heart, and the Urchin/Starfish devices to position the heart in a desired direction, and that these functions can be performed regardless of what model of sternal retractor is used. Similarly, the OctoBase product can be used to open the chest with or without the challenged suture guide product. [Def. Mem. 22 and exhibits there cited.] Thus, Medtronic claims, the accused product cannot be treated as part of a "functional unit" with the other instruments, as required by Rite-Hite.

The functionality of the various products, however, is irreducibly a question of fact: Medtronic essentially asks that the Court, without having heard expert testimony or hearing the claims subjected to cross-examination, decide that no reasonable jury could determine that the challenged product acts as part of an integrated system or a system "analogous to a single functioning unit." Rite-Hite, 56 F.3d at 1550. Quickie points out that the components of the entire "Octopus System" have been designed to work together and are sold as a system. While the Octopus was developed earlier and the Starfish/Urchin instruments later, the OctoBase was introduced along with the accused suture guide device, and is described by Medtronic itself as "a reusable stainless steel sternal retractor configured with removable, single use inserts designed for securing deep pericardial sutures during beating heart surgical procedures." [Decl. of Lara A. Johnson, executed Nov. 25, 2003, Ex. 28 at MEDQ 02231.] In other words, the suture guide/insert is described in Medtronic's own literature as a disposable insert for the OctoBase, specifically designed to be used with that instrument as a single unit; a reasonable fact-finder could conclude that the OctoBase and the suture guide act as a single unit, with the latter component sold separately and not integrated as a single machine in large part because of its disposable "single use" quality.

The Octopus and Starfish/Urchin instruments appear less integrally connected to the suture guide/insert. They can apparently be used with other sternal retractors, for example, and the suture guide/insert is not integrated directly into those instruments, as it is into the OctoBase. Quickie argues, however, that the entire "Octopus System" is designed to work together as a functional unit to achieve a particular desired result - optimal beating heart surgery - in a way that is a desirable advance on previous products via a complete system. Cf. Bose Corp. v. JBL, Inc., 274 F.3d 1354, 1361 [Fed. Cir. 2001] ["entire market value rule" applies because the accused device operated "with other components of loudspeakers as a single functioning unit to provide the desired audible performance"] [emphasis added]. In effect, they argue that while the various parts could be used separately, Medtronic designed and markets the "system" as an integrated unit, such that only by using the entire device can a heart surgeon achieve the desired optimal performance. Quickie supplements this showing by presenting expert testimony from surgeons who testify variously that they would never use Medtronic's other products without the OctoBase and its challenged suture guide/inserts; that they have never seen the OctoBase used without the challenged devices; and that there is "no good way" of performing certain surgeries without the complete system. Quickie also offers evidence that the vast majority of sales of all the instruments in question [especially the OctoBase] were made to customers who also purchased the accused device. [See evidence cited at Pl. Mem. 23-25.]

Rite-Hite suggests caution about the interpretation of some of this evidence. The "entire market value rule" does not apply to products that are sold together for "marketing reasons, not because they essentially function[] together." 56 F.3d at 1551. Medtronic argues that its various instruments work separately, to perform separate functions, and that it merely markets these devices together in various custom packages for surgeons who can pick and choose among the various components. Good salesmanship and the preference of users to construct systems from components offered by the same manufacturer could account for the sales statistics. Were the Court sitting as a factfinder based on the cold record before it, Medtronic's argument might seem fairly persuasive as to the Octopus and Starfish/Urchin products, rather less so as to the OctoBase.

But the Court is not in the position of factfinder. Its role here is to decide whether, on the limited summary judgment record presented, Medtronic has shown as to any of the instruments that no reasonable factfinder could conclude that its "Octopus System" is a single functional unit, or a set of components "analogous to" such a single unit, that function together to achieve a desired result in such a way that its entire market value derives from the use of the device that Quickie claims infringes its patent. While Quickie's proposition seems dubious as to at least some of the

instruments in question, the Court cannot say at this stage that Quickie may not present its evidence to the factfinder in a full trial.

Conclusion

Because plaintiff makes no claim of breach of contract, defendant's motion to dismiss such claim is denied. Because there are issues of fact for trial with respect to the integrated functionality of the various products at issue, defendant's motion for partial summary judgment is denied.

So Ordered.

LOAD-DATE: January 29, 2004

US District Court Civil Docket

U.S. District - New York Southern
(Foley Square - NYC)

1:02cv1157

Quickie, Llc v. Medtronic, Inc

This case was retrieved from the court on Wednesday, December 01, 2004

| | |
|--|--------------------------------|
| Date Filed: 02/13/2002 | Class Code: |
| Assigned To: Judge Gerard E Lynch | Closed: no |
| Referred To: | Statute: 35:271 |
| Nature of suit: Patent (830) | Jury Demand: Plaintiff |
| Cause: Patent Infringement | Demand Amount: \$0 |
| Lead Docket: None | NOS Description: Patent |
| Other Docket: None | |
| Jurisdiction: Federal Question | |

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| Date | # | Proceeding Text |
|------------|----|---|
| 02/13/2002 | 1 | COMPLAINT filed. Summons issued and Notice pursuant to 28 U.S.C. 636(c). FILING FEE \$ 150.00 RECEIPT # 430326. (gmo) (Entered: 02/20/2002) |
| 02/13/2002 | 2 | RULE 1.9 CERTIFICATE filed by Quickie, L.L.C. . (gmo) (Entered: 02/20/2002) |
| 02/13/2002 | -- | Magistrate Judge Michael H. Dolinger is so designated. (gmo) (Entered: 02/20/2002) |
| 04/11/2002 | 3 | STIPULATION and ORDER, reset answer due for 4/26/02 for Medtronic, Inc. (signed by Judge Gerard E. Lynch) (kw) (Entered: 04/12/2002) |
| 04/12/2002 | 4 | AFFIDAVIT OF SERVICE of summons and complaint as to Medtronic, Inc. by mail and facsimile to counsel on 3/15/02 . . (bai) (Entered: 04/17/2002) |
| 04/24/2002 | 5 | NOTICE OF MOTION by Medtronic, Inc. for an order admitting Raphael V. Lupo, Donna M. Tanguay, Brian E. Ferguson and Steven K. Shahida to appear pro hac vice . Return Date 6/4/02 at 9:30. Affidavits of Chryssa V. Valletta, Raphael V. Lupo, Donna M. Tanguay, Brain E. Ferguson and Steven K. Shahida in support attached. (bai) (Entered: 04/26/2002) |
| 04/24/2002 | 6 | RULE 1.9 CERTIFICATE filed by Medtronic, Inc. . (bai) (Entered: 04/26/2002) |
| 04/24/2002 | 7 | ANSWER to Complaint and COUNTERCLAIM by Medtronic, Inc. against Quickie, L.L.C. ; Firm of: Will & Emery by attorney Chryssa V. Valletta for defendant Medtronic, Inc. (bai) (Entered: 04/26/2002) |
| 05/02/2002 | -- | Memo endorsed on motion; that the Court is granting the [5-1] motion for an order admitting Raphael V. Lupo, Donna M. Tanguay, Brian E. Ferguson and Steven K. Shahida to appear pro hac vice. (signed by Judge Gerard E. Lynch); Copies mailed. FORWARDED DOCUMENT TO ATTORNEY ADMISSIONS CLERK. (tp) (Entered: 05/02/2002) |
| 05/15/2002 | -- | CASHIER'S OFFICE REMARK on [5-1] motion for an order admitting Raphael V. Lupo, Donna M. Tanguay, Brian E. Ferguson and Steven K. Shahida to appear pro hac vice in the amount of \$100.00 paid on 05/03/02 Receipt # 437903. (dj) (Entered: 05/15/2002) |
| 05/22/2002 | 8 | SCHEDULING ORDER: Discovery pertaining to claims construction shall be completed by June 14, 2002; The parties shall submit simultaneous Markman briefs by July 1, 2002; Reply briefs shall be submitted by both parties no later than August 1, 2002. (signed by Judge Gerard E. |

Lynch); Copies mailed. (jco) (Entered: 05/22/2002)

07/03/2002 10 MEMORANDUM OF LAW by Quickie, L.L.C. re: claim construction. (dle) (Entered: 07/11/2002)

07/03/2002 11 DECLARATION of Todd S. Sharinn by Quickie, L.L.C. in support Re: [10-1] memorandum . (dle) (Entered: 07/11/2002)

07/03/2002 12 OPENING BRIEF by Medtronic, Inc. re:claim construction issues (Markman Brief). (dle) (Entered: 07/11/2002)

07/03/2002 13 DECLARATION of Stephen K. Shahida by Medtronic, Inc. in support Re: [12-1] opposition memorandum . (dle) (Entered: 07/11/2002)

07/09/2002 9 Memo-Endorsement on letter addressed to Ms. Joellen Valentine from Todd S. Sharinn, dated 7/1/02: Granting the parties extension until 7/3/02 to file and serve their Markman briefs . (signed by Judge Gerard E. Lynch); Copies mailed. (tp) (Entered: 07/11/2002)

08/01/2002 14 REPLY BRIEF by Medtronic, Inc. re: claim construction issues (Markman brief) (yv) (Entered: 08/06/2002)

08/01/2002 15 REPLY MEMORANDUM by Quickie, L.L.C. re: claim construction. (yv) (Entered: 08/06/2002)

08/01/2002 16 DECLARATION of Todd S. Sharinn by Quickie, L.L.C. in support Re: [15-1] reply memorandum . (yv) (Entered: 08/06/2002)

10/02/2002 17 ORDER; that Quickie filed this patent infringement action on 2/13/02, claiming that Medtronic, Inc. with whom it had previously entered into an agreement for the "mutual exchange of confidential information concerning the development, manufacture, and marketing of certain technologies", infringed the '160 Patent by selling a device for retaining sutures. Having briefs and appeared for a Markman hearing on 9/4/02, to discuss the key disputed terms, the action is now before the Court on claim construction; the Court rejects defendant's construction of the disputed terms and adopts plaintiff's construction, with the limitation that "aperture" encompasses not any opening, but rather one that creates a spatial relationship between the movable cam and aperture walls, as described in the patent, that capture of the cam within the aperture . (signed by Judge Gerard E. Lynch); (pl) (Entered: 10/07/2002)

11/01/2002 18 Transcript of record of proceedings before Judge Gerard E. Lynch 9/4/02. (kw) (Entered: 11/01/2002)

11/04/2002 19 STIPULATION and ORDER; that the attorneys of record for plaintiff in this action shall be changed and that Thelen Reid & Priest LLP with offices located at 40 West 57th Street, N.Y.C., be substituted for Greenberg Traurig with offices located at 885 Third Avenue, N.Y.C., as attorneys of record for such plaintiff herein . (signed by Judge Gerard E. Lynch) (pl) (Entered: 11/07/2002)

11/08/2002 20 NOTICE of CHANGE of ADDRESS by Quickie, L.L.C. Thelen Reid & Priest LLP will be moving to a new address at: Thelen Reid & Priest LLP, 875 Third Avenue, New York, NY, 10022, (212) 603-2000, Fax (212) 603-2001. (sb) (Entered: 11/14/2002)

11/26/2002 21 NOTICE OF MOTION by Medtronic, Inc. for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings . Return Date not indicated. Affirmation of Brian E. Ferfuson along with exhibits is attached. (tp) Modified on 12/04/2002 (Entered: 12/04/2002)

11/26/2002 22 MEMORANDUM OF LAW by Medtronic, Inc. in support of [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings. (tp) (Entered: 12/04/2002)

12/16/2002 23 Memo-Endorsement on letter addressed to Judge Lynch from Chryssa V. Valletta, dated 12/10/02. Re: counsel for dft request to set the foregoing scheduling order deadlines: Quickie L.L.C.'s opposition papers to be filed and served on 12/24/02 and Meltronic reply papers to be filed and served on 1/14/03. Application granted , Meltronic request that your Honor endorse said letter so that the proper exhibit # 10 (annexed to sadi letter) may become part of the Court Record. Application granted . (signed by Judge Gerard E. Lynch) (db) (Entered: 12/20/2002)

12/24/2002 24 OPPOSITION by Quickie, L.L.C. to [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings (Filed in the night deposit on 12/24/02 at 3:57 p.m.) (ae) (Entered: 12/26/2002)

12/24/2002 25 (COPY) AFFIDAVIT of Mark Fox Evens by Quickie, L.L.C. in support of [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings . (Filed in the night deposit on 12/24/02 at 3:57 p.m.) (ae) (Entered: 12/26/2002)

01/14/2003 26 REPLY MEMORANDUM by Medtronic, Inc. in support re: [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination

proceedings . (dj) (Entered: 01/21/2003)

- 01/23/2003 27 ORDER; denying [21-1] motion for an Order staying this litigation pending the outcome of the U.S. Patent & Trademark Office reexamination proceedings; Discovery is to be completed by 6/20/03. Extensions of the discovery schedule will be disfavored ; A status conference will be held at 10:30 a.m. on 6/27/03. A date for trial, or a schedule for the filing of dispositive motions, will be set at that time . (signed by Judge Gerard E. Lynch) (jco) (Entered: 01/27/2003)
- 02/26/2003 28 NOTICE OF MOTION by Medtronic, Inc. for an order pursuant to Rule 1.3(c) of the FRCP permitting Charles R. Work to appear pro hac vice . Affidavit of Charles R. Work in support of motion attached. No Return Date indicated. (db) (Entered: 02/27/2003)
- 03/11/2003 29 STIPULATION and ORDER: the discovery deadline is extended by sixty (60) days, to and including 8/20/03, and the status conference be extended to 8/22/03 at 11:00 a.m. . (signed by Judge Gerard E. Lynch) (db) (Entered: 03/13/2003)
- 03/14/2003 30 Memo endorsed on copy of motion; granting [28-1] motion for an order pursuant to Rule 1.3 (c) of the FRCP permitting Charles R. Work to appear pro hac vice. (signed by Judge Gerard E. Lynch); forwarded this document to the Attorney Admissions Clerk. (pl) (Entered: 03/17/2003)
- 03/27/2003 31 Case Management Plan: Joining of parties 6/2/03, amending of pleadings on 6/16/03; All Discovery cutoff 8/20/03; Deadline for filing of dispositive motions 9/30/03; Answering papers to be served and filed by 10/20/03; Reply papers to be served and filed by 10/31/03; Case management conference set for 11:00 8/22/03 (signed by Judge Gerard E. Lynch); (cd) (Entered: 03/28/2003)
- 04/10/2003 32 NOTICE OF MOTION by Quickie, L.L.C. for Mark F. Evens to appear pro hac vice on behalf of plaintiff ; for Jeffrey R. Gans to appear pro hac vice on behalf of plaintiff . Return Date 4/25/03. Affidavits of Shari H. Markowitz-Savitt, Jeffrey R. Gans, and Mrk F. Evens are attached. (tp) (Entered: 04/11/2003)
- 04/21/2003 33 NOTICE OF MOTION by Quickie, L.L.C. for an order pursuant to Rule 1.3(c) of the Local Civil Rules of the U.S.D.C. for the S.D.N.Y. admitting Lara A. Johnson to this court on a pro hac vice basis to represent plaintiff Quickie in this action . Return Date 5/7/03. (dle) (Entered: 04/23/2003)
- 04/25/2003 34 Memo endorsed on motion; granting [33-1] motion for an order pursuant to Rule 1.3(c) of the Local Civil Rules of the U.S.D.C. for the S.D.N.Y. admitting Lara A. Johnson to this court on a pro hac vice basis to represent plaintiff Quickie in this action. (signed by Judge Gerard E. Lynch) Copy of document sent to Atty. Admissions Clerk. (sb) (Entered: 04/25/2003)
- 05/05/2003 -- Memo endorsed on motion; granting [32-1] motion for Mark F. Evens to appear pro hac vice on behalf of plaintiff; granting [32-2] motion for Jeffrey R. Gans to appear pro hac vice on behalf of plaintiff. (signed by Judge Gerard E. Lynch); Sent orig. doc. to the Attorney Admission Clerk. (ae) Modified on 05/06/2003 (Entered: 05/06/2003)
- 06/19/2003 35 NOTICE OF MOTION by Medtronic, Inc. for Mehul R. Jani to appear pro hac vice ; Return Date not indicated; Attached is Affidavit in support; (dj) (Entered: 06/20/2003)
- 06/27/2003 36 AFFIDAVIT of Mehul R. Jani by Medtronic, Inc., Medtronic, Inc. in support of his application to be admitted to practice before this court and represent Medtronic pro hac vice. (dle) (Entered: 07/02/2003)
- 06/30/2003 -- Memo endorsed on motion; granting [35-1] motion for Mehul R. Jani to appear pro hac vice. Document sent to attorney admissions. (signed by Judge Gerard E. Lynch) (db) (Entered: 07/01/2003)
- 08/07/2003 -- CASHIER'S OFFICE REMARK on in the amount of \$75.00 paid on 8/7/03 Receipt # 481490. (jco) (Entered: 08/11/2003)
- 09/05/2003 37 STIPULATION and ORDER, that the dates set forth in the initial case management plan shall be extended as follows: dispositive motions-10/30/03; answer to dispositive motions-11/19/03; reply to dispositive motions-12/10/03; tentative trial-two weeks beginning 5/3/04; discovery is now closed, with the sole exception of three depositions previously by the parties for 8/27/03, 8/28/03 and 8/29/03 . (signed by Judge Gerard E. Lynch) (dle) (Entered: 09/09/2003)
- 10/30/2003 38 NOTICE OF MOTION by Medtronic, Inc., for an order granting partial summary judgment on damage claims for non-accused, non-infringing products . No Return Date. (kw) (Entered: 10/31/2003)
- 10/30/2003 39 RULE 56.1 STATEMENT filed by Medtronic, Inc. (kw) (Entered: 10/31/2003)
- 10/30/2003 40 DECLARATION of Stephen K. Shahida by Medtronic, Inc. in support of Re: [38-1] motion for an order granting partial summary judgment on damage claims for non-accused, non-infringing

products. (kw) (Entered: 10/31/2003)

10/30/2003 41 DECLARATION of Michael D. Strong by Medtronic, Inc. in support Re: [38-1] motion for an order granting partial summary judgment on damage claims for non-accused, non-infringing products. (kw) (Entered: 10/31/2003)

10/30/2003 42 DECLARATION of Jill Hennesen by Medtronic, Inc. in support Re: [38-1] motion for an order granting partial summary judgment on damage claims for non-accused, non-infringing products. (kw) (Entered: 10/31/2003)

10/30/2003 43 MEMORANDUM OF LAW by Medtronic, Inc. in support of [38-1] motion for an order granting partial summary judgment on damage claims for non-accused, non-infringing products. (kw) (Entered: 10/31/2003)

10/30/2003 44 NOTICE OF MOTION by Medtronic, Inc., for an order dismissing without prejudice all claims for relief, express or implied, under the parties' license agreement . No Return Date. (kw) (Entered: 10/31/2003)

10/30/2003 45 DECLARATION of Stephen K. Shahida by Medtronic, Inc. in support Re: [44-1] motion for an order dismissing without prejudice all claims for relief, express or implied, under the parties' license agreement. (kw) (Entered: 10/31/2003)

10/30/2003 46 MEMORANDUM OF LAW by Medtronic, Inc. in support of [44-1] motion for an order dismissing without prejudice all claims for relief, express or implied, under the parties' license agreement. (kw) (Entered: 10/31/2003)

11/17/2003 47 STIPULATION and ORDER, plaintiff's time to serve its opposition to dft's motions be extended to 11/26/03 , and dft's time to serve its reply to plaintiff's opposition to dft's motions be extended to 12/19/03 . (signed by Judge Gerard E. Lynch) (dle) (Entered: 11/19/2003)

11/26/2003 48 MEMORANDUM OF LAW in Opposition re: [44] Motion to Dismiss, [38] Motion for Summary Judgment. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 49 RESPONSE re: [39] Rule 56.1 Statement. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 50 RULE 56.1 STATEMENT. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 51 DECLARATION of Lara A. Johnson in Opposition re: [44] Motion to Dismiss, [38] Motion for Summary Judgment. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 52 AFFIRMATION of Susan B. McInerney in Support re: [51] Declaration in Opposition to Motion. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M. (sac,) (Entered: 12/10/2003)

11/26/2003 53 EXHIBIT to Declaration of Lara A. Johnson Volume I Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:21 P.M.(sac,) (Entered: 12/10/2003)

11/26/2003 54 EXHIBIT to Declaration of Lara A. Johnson Volume II. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:22 P.M.(sac,) (Entered: 12/10/2003)

11/26/2003 55 EXHIBIT to Declaration of Lara A. Johnson Volume III. Document filed by Quickie, L.L.C. Received in the night deposit box on 11/26/03 at 6:22 P.M.(sac,) (Entered: 12/10/2003)

12/08/2003 56 ENDORSED LETTER addressed to Judge Gerard E. Lynch from Susan McInerney dated 11/25/03 re: Quickie requests an extension of the page limitation to 35 pages to file opposition to defendant Medtronic's two motions. So ordered. (Signed by Judge Gerard E. Lynch on 11/26/03) (kw,) (Entered: 12/23/2003)

12/19/2003 57 REPLY MEMORANDUM OF LAW in Support re: [44] Motion to Dismiss. Document filed by Medtronic, Inc.. (dle,) (Entered: 01/07/2004)

12/19/2003 58 DEFENDANT'S RESPONSE TO PLAINTIFF'S [50] Rule 56.1 Statement. Document filed by Medtronic, Inc.. (dle,) (Entered: 01/07/2004)

12/19/2003 59 DECLARATION of Stephen K. Shahida in Support re: [38] Motion for Summary Judgment. Document filed by Medtronic, Inc.. (dle,) (Entered: 01/07/2004)

12/19/2003 60 REPLY MEMORANDUM OF LAW in Support re: [38] Motion for Summary Judgment. Document filed by Medtronic, Inc.. (dle,) (Entered: 01/07/2004)

12/31/2003 61 Plaintiff's COUNTER STATEMENT TO [39] Rule 56.1 Statement. Document filed by Quickie, L.L.C.. (dle,) (Entered: 01/14/2004)

12/31/2003 62 DECLARATION of Eugene A. Grossi, MD. Document filed by Quickie, L.L.C.. (dle,) (Entered: 01/14/2004)

| | | |
|------------|----|---|
| 01/15/2004 | 63 | OPINION and ORDER # 89572: because plaintiff makes no claim of breach of contract, defendants [44] motion to dismiss such a claims is DENIED. Because there are issues of fact for trial with respect to the intergrated functionality of the various products at issue, defendants [38] motion for partial summary judgment is DENIED. (Signed by Judge Gerard E. Lynch on 1/14/04) (db,) (Entered: 01/27/2004) |
| 02/20/2004 | 64 | NOTICE OF MOTION & MOTION for Grace M. Mora to Appear Pro Hac Vice.with attached affdvts of Susan B. McInerney and Grace M. Morain support. (NDB) Document filed by Quickie, L.L.C.. (pa,) (Entered: 02/23/2004) |
| 03/15/2004 | 65 | ORDER granting [64] MOTION for Grace M. Mora to Appear Pro Hac Vice filed by Quickie, L.L.C. (Signed by Judge Gerard E. Lynch on 3/10/04) (tp,). (Entered: 03/18/2004) |
| 03/15/2004 | -- | Transmission to Attorney Admissions Clerk. Transmitted re: [65] Order, to the Attorney Admissions Clerk for updating of Attorney Information. (tp,) (Entered: 03/18/2004) |
| 04/01/2004 | 66 | NOTICE OF MOTION in Limine to preclude plttf from introducing at trial any testimony of Mr. Q. Todd Dickinson on any subject other than US Patent and trademark office practices and procedures. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004) |
| 04/01/2004 | 67 | NOTICE OF MOTION in Limine to preclude plttf from introducing at trial any testimony of evidence concerning prejudgement interest. Oral Argument Requested (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004) |
| 04/01/2004 | 68 | NOTICE OF MOTION in Limine to preclude plttf from introducing at trial any testimony of Dr. Wolf concerning infringement or licensing Oral Argument Requested. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004) |
| 04/01/2004 | 69 | NOTICE OF MOTION in Limine to preclude plttf from introducing at trial any expert testimony concerning infringement under the doctrine of equivalents. (Oral Argment Requested (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004) |
| 04/01/2004 | 70 | MEMORANDUM OF LAW in Support re: [69] MOTION in Limine. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004) |
| 04/01/2004 | 71 | MEMORANDUM OF LAW in Support re: [67] MOTION in Limine. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004) |
| 04/01/2004 | 72 | MEMORANDUM OF LAW in Support re: [66] MOTION in Limine. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004) |
| 04/01/2004 | 73 | MEMORANDUM OF LAW in Support re: [68] MOTION in Limine. (nite dep. box). Document filed by Medtronic, Inc.. (pa,) (Entered: 04/02/2004) |
| 04/01/2004 | 74 | Verdict Form for Jury. Document filed by Quickie, L.L.C.. (dle,) (Entered: 04/05/2004) |
| 04/01/2004 | 75 | Proposed Voir Dire Questions. Document filed by Quickie, L.L.C..(dle,) (Entered: 04/05/2004) |
| 04/01/2004 | 76 | Proposed Jury Instructions. Document filed by Quickie, L.L.C..(dle,) (Entered: 04/05/2004) |
| 04/01/2004 | 77 | Medtronic, Inc.'s Proposed Jury Verdict Form. Document filed by Medtronic, Inc.. (dle,) (Entered: 04/05/2004) |
| 04/01/2004 | 78 | Proposed Voir Dire Questions. Document filed by Medtronic, Inc..(dle,) (Entered: 04/05/2004) |
| 04/01/2004 | 79 | Proposed Jury Instructions. Document filed by Medtronic, Inc..(dle,) (Entered: 04/05/2004) |
| 04/01/2004 | 80 | MOTION in Limine to exclude deft's use of the "advise of counsel" defense based upon Daniel Latham's E-mails. Document filed by Quickie, L.L.C. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 81 | DECLARATION of Lara Johnson in Support re: [80] MOTION in Limine. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 82 | MEMORANDUM OF LAW in Support re: [80] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 83 | MOTION in Limine to exclude certain patents as exhibits and testimony relating to those patents. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 84 | MEMORANDUM OF LAW in Support re: [83] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 85 | MOTION in Limine to exclude testimony concerning deft's Fifth Affirmative Defense, purs to 35 USC 112. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 86 | DECLARATION of Lara Johnson in Support re: [85] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 87 | MEMORANDUM OF LAW in Support re: [85] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |

| | | |
|------------|-----|--|
| 04/01/2004 | 88 | MOTION in Limine to exclude expert testimony of Dr. Wright on invalidity. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 89 | DECLARATION of Lara Johnson in Support re: [88] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 90 | MEMORANDUM OF LAW in Support re: [88] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 91 | MOTION in Limine to esclude extinsic evidence offered by Medtronic that contradicts the plain terms of the license agreement. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 92 | DECLARATION of Lara Johnson in Support re: [91] MOTION in Limine.. Document filed by Quickie, L.L.C. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 93 | MEMORANDUM OF LAW in Support re: [91] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 94 | MOTION in Limine to limit the expert testimony of Dr. Stong III. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 95 | DECLARATION of Lara Johnson in Support re: [94] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 96 | MEMORANDUM OF LAW in Support re: [94] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 97 | MOTION in Limine to exclude irrelevant and unduly prejudicial exhibits designated by deft. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 98 | DECLARATION of Lara Johnson in Support re: [97] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 99 | MEMORANDUM OF LAW in Support re: [97] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 100 | MOTION in Limine to exclude the testimony of Mr. Mossinghoff. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 101 | DECLARATION of Lara Johnson in Support re: [100] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 102 | MEMORANDUM OF LAW in Support re: [100] MOTION in Limine.. Document filed by Quickie, L.L.C.. (cd,) (Entered: 04/05/2004) |
| 04/01/2004 | 103 | Proposed Pretrial Order. Document filed by Medtronic, Inc., Quickie, L.L.C..(cd,) (Entered: 04/05/2004) |
| 04/02/2004 | 104 | Defendant's Objections To Plaintiff's Designations. Document filed by Medtronic, Inc.. (jmi,) (Entered: 04/05/2004) |
| 05/07/2004 | 105 | ORDER plaintiff's motion to admit Grace M. Mora pro hac vice was granted by the Court's Order dated 3/10/04. The Clerk of the Court is respectfully directed to close out this motion in all internal reports. So Ordered. (Signed by Judge Gerard E. Lynch on 5/5/04) (jco,) (Entered: 05/10/2004) |
| 09/02/2004 | 106 | ORDER that the motions (docket nos. 66-69, 80, 83, 85, 88, 91, 94, 97, and 100) shall be deemed withdrawn, without prejudice to their renewal if and when the case returns to the court's active docket. The clerk of court is directed to close out these motions in all internal reports. (Signed by Judge Gerard E. Lynch on 8/30/04) (die,) (Entered: 09/07/2004) |
| 11/12/2004 | 107 | ORDER; the Clerk of the Court is respectfully directed to transfer this case to the suspense docket until further notice. The parties are directed to appear before the Court for a status conference on 3/4/05, at 11:00 a.m., and to advise the Court promptly of any decision in the parallel proceedings before the PTO. (Signed by Judge Gerard E. Lynch on 11/4/04) (pl,) (Entered: 11/17/2004) |
| 11/12/2004 | -- | Set/Reset Scheduling Order Deadlines: Status Conference set for 3/4/2005 11:00 AM before Judge Gerard E. Lynch. (pl,) (Entered: 11/17/2004) |

EXHIBIT 6

PEPE & HAZARD LLP
LAW OFFICES

Goodwin Square
225 Asylum Street
Hartford, CT 06103

Telephone: [860] 522-5175
Fax: [860] 522-2796

Fax Cover Sheet

DATE: October 3, 2006 TIME: _____ CLIENT/MATTER: 1234-1

PLEASE DELIVER THIS FAX IMMEDIATELY TO:

| NAME/PHONE: | FIRM: | FAX NUMBER: |
|------------------|---------------|--------------|
| Timothy J. Maier | Maier & Maier | 703 991-7071 |

FROM: Shiela P. Klapatch

MESSAGE:

DOCUMENT DESCRIPTION:

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER SHEET: 6

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US IMMEDIATELY.

THE INFORMATION CONTAINED IN THIS ELECTRONIC MESSAGE AND ANY ATTACHED DOCUMENT(S) IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR AND THAT ANY REVIEW DISSEMINATION DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (860) 522-5175 OR BY ELECTRONIC MAIL (postmaster@pcpehazard.com) IMMEDIATELY. THANK YOU.

Transmitted By: _____ Return To: klapatch

PEPE&HAZARD LLP

A BUSINESS LAW FIRM

GOODWIN SQUARE
225 ASYLUM STREET
HARTFORD, CONNECTICUT 06103-4302
860.522.5175 FACSIMILE: 860.522.2796

SHIELA P. KLAPATCH
Paralegal
Direct: 860.524.7014
sklapatch@pepehazard.com

October 3, 2006

By Facsimile

Timothy J. Maier, Esq.
Maier & Maier, PLLC
128 North Pitt Street, Second Floor
Alexandria VA 22314

Dear Mr. Maier:

Quickie, LLC
Transfer of Files
Our Ref: 29620

Pursuant to your letter dated September 26, 2006 to Peter L. Costas, attached are the following:

1. Letter dated May 1, 2001 to Quickie, LLC with listing of files to be transferred signed by Alan Fell on behalf of Quickie.
2. Letter dated May 21, 2001 to Todd Sharinn listing the files being transferred to him by our firm (expurgated).

If we can be of further help, please let me know.

Very truly yours,


Shiela P. Klapatch

PEPE&HAZARD LLP**LAW OFFICES**

GOODWIN SQUARE
HARTFORD, CONNECTICUT 06103-4302
860/522-5175 FACSIMILE 860/522-2796

DAVID URBANIK
Executive Director
Direct Dial: (860) 241-2658
durbanik@pepehazard.com

May 4, 2001

BY FAX AND FIRST CLASS MAIL

Quickie, LLC
c/o Alan Fell, Esq.
Rick, Steiner P.C.
Three New York Plaza
New York, NY 10004

Re: Transfer of Legal Matters/Documentation

Dear Mr. Fell:

As you may know, Todd Sharinn, who has handled various matters for you, will be leaving Pepe & Hazard soon to start his own firm. We very much regret losing Todd, but wish him well.

His departure, however, raises the question of responsibility for your files in the above-captioned matters. If you wish our firm to continue its representation, we would be pleased to do so. If, on the other hand, you wish Mr. Sharinn to assume responsibility for these cases, we will transfer the files to him.

Please indicate below whether you would like the files to be transferred, and return a signed copy of this letter to me either by fax at 860-522-2796 or by returning same in the enclosed self-addressed envelope. In the interim, if you have any questions you may contact Todd directly at 860-242-2977.

Sincerely,



David Urbanik

cc: Todd S. Sharinn, Esq.

PEPE&HAZARD LLP

January 15, 2001
Page 2

I hereby request that the files set forth above be transferred to Attorney Todd Sharinn.

Please Transfer Please Do Not Transfer

| | |
|--|---------------------------------------|
| Novel Knotless Suture System For Use In | var <i>Sant</i> <i>USP</i> <i>EPD</i> |
| Emicon Endo-Surgery, Inc. | /// |
| U.S. Surgical | /// |
| Suture Termination Device 4-150 | /// |
| General Corp. | /// |
| Sutureless System For Attachment 6 | /// |
| Medtronic License Agreement | /// |

AQ Fell

5/14/01

Date

PEPE&HAZARD LLP

LAW OFFICES

GOODWIN SQUARE

HARTFORD, CONNECTICUT 06103-4302

860/522-5175 FACSIMILE 860/522-2796

CYNTHIA TREFETHEN-LEMAY

Records Manager

DIRECT DIAL 203/241-2669

e-mail clemay@pepehazard.com


May 21, 2001

Mr. Todd Sharinn
23 Highwood Road
Bloomfield, CT 06002

Re: Transfer of Original Client Files listed below:

29620 - Quickie, LLC

- ✓ 1 EP0 Novel Knotless Suture System For Use In
- ✓ 1 US0 Novel Knotless Suture System For Use In
- ✓ 2 Ethicon Endo-Surgery, Inc.
- ✓ 3 U.S. Surgical
- ✓ 5 General Corp
- ✓ 401 Medtronic License Agreement



PEPE & HAZARD LLP

A BUSINESS LAW FIRM

GOODWIN SQUARE
225 ASYLUM STREET
HARTFORD, CONNECTICUT 06103-4302
860.522.5175 FACSIMILE: 860.522.2796

SHIELA P. KLAPATCH
Paralegal
Direct: 860.524.7014
sklapatch@pepehazard.com

October 3, 2006

By Facsimile

Timothy J. Maier, Esq.
Maier & Maier, PLLC
128 North Pitt Street, Second Floor
Alexandria VA 22314

Dear Mr. Maier:

Quickie, LLC
Transfer of Files
Our Ref: 29620

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1. Letter dated May 1, 2001 to Quickie, LLC with listing of files to be transferred signed by Alan Fell on behalf of Quickie.
2. Letter dated May 21, 2001 to Todd Sharinn listing the files being transferred to him by our firm (expurgated).

If we can be of further help, please let me know.

Very truly yours,



Shiela P. Klapatch

SPK/29620/1/788132v1
10/03/06-HRT/

BOSTON

HARTFORD

FAIRFIELD COUNTY

www.pepehazard.com

PEPE & HAZARD LLP

LAW OFFICES

GOODWIN SQUARE
HARTFORD, CONNECTICUT 06103-4302
860/522-5175 FACSIMILE 860/522-2796

DAVID URBANIK
Executive Director
Direct Dial: (860) 241-2658
durbanik@pepehazard.com

May 4, 2001

BY FAX AND FIRST CLASS MAIL

Quickie, LLC
c/o Alan Fell, Esq.
Rick, Steiner P.C.
Three New York Plaza
New York, NY 10004

Re: Transfer of Legal Matters/Documentation

Dear Mr. Fell:

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His departure, however, raises the question of responsibility for your files in the above-captioned matters. If you wish our firm to continue its representation, we would be pleased to do so. If, on the other hand, you wish Mr. Sharinn to assume responsibility for these cases, we will transfer the files to him.

Please indicate below whether you would like the files to be transferred, and return a signed copy of this letter to me either by fax at 860-522-2796 or by returning same in the enclosed self-addressed envelope. In the interim, if you have any questions you may contact Todd directly at 860-242-2977.

Sincerely,



David Urbanik

cc: Todd S. Sharinn, Esq.

January 15, 2001
Page 2

I hereby request that the files set forth above be transferred to Attorney Todd Sharinn.

Please Transfer

Please Do Not Transfer

~~Novel Knotless Suture System For Use In~~ 1

var Sant USP EPD

~~Ethicon Endo-Surgery, Inc.~~ 2

~~U.S. Surgical~~ 3

Suture Termination Device 4-USP

~~General Corp~~ 5

Sutureless System For Attachment 6

~~Medtronic License Agreement~~ 7

A. Q. Fell

5/14/01

Date

GOODWIN SQUARE

HARTFORD, CONNECTICUT 06103-4302

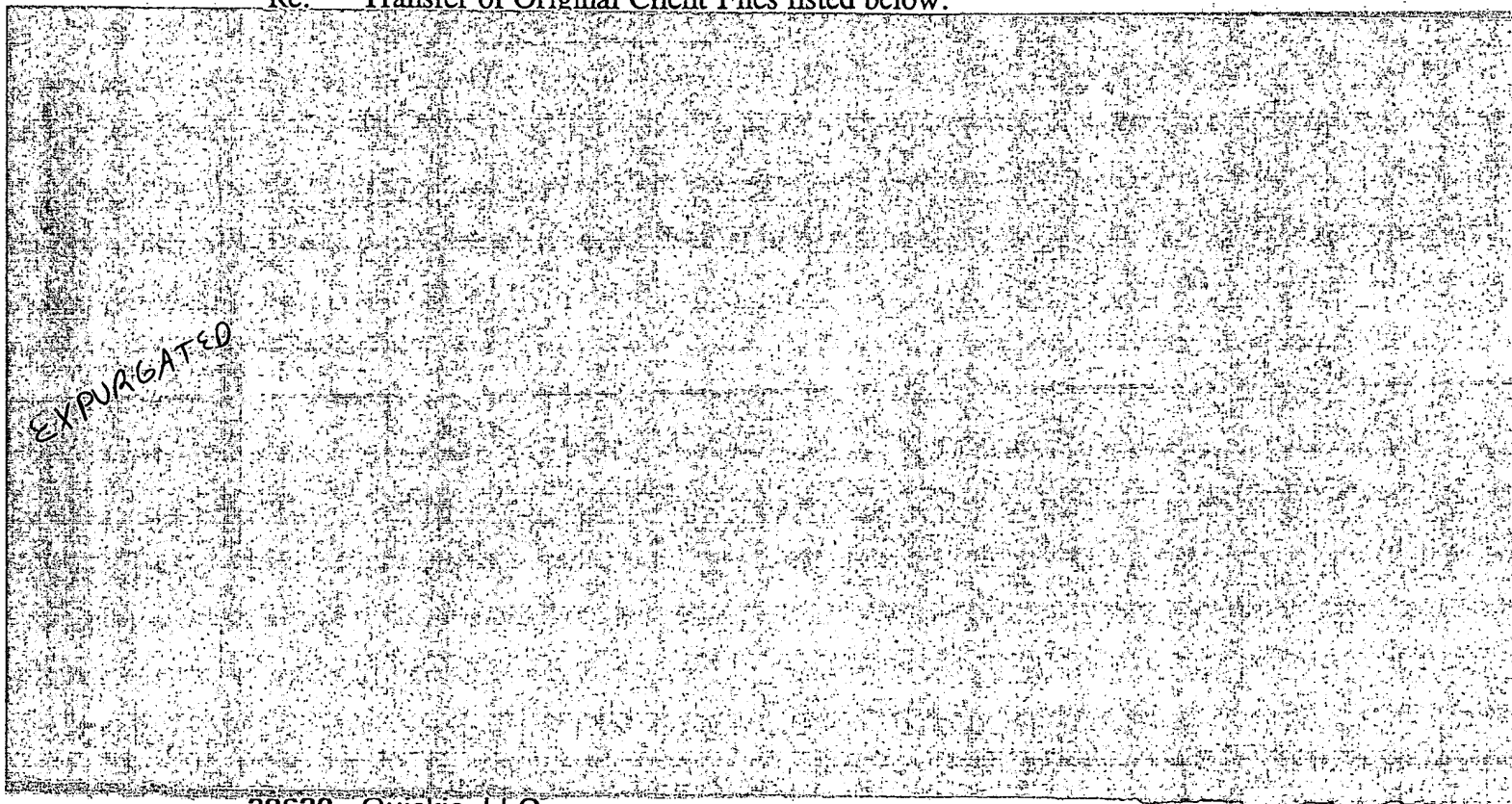
860/522-5175 FACSIMILE 860/522-2796

CYNTHIA TREFETHEN-LEMAY
Records Manager
DIRECT DIAL 203/241-2669
e-mail clemay@pepehazard.com

May 21, 2001

Mr. Todd Sharinn
23 Highwood Road
Bloomfield, CT 06002

Re: Transfer of Original Client Files listed below:



29620 - Quickie, LLC

- ✓ 1 EP0 Novel Knotless Suture System For Use In
- ✓ 1 US0 Novel Knotless Suture System For Use In
- ✓ 2 Ethicon Endo-Surgery, Inc.
- ✓ 3 U.S. Surgical
- ✓ 5 General Corp
- ✓ 401 Medtronic License Agreement

[Handwritten signature/initials with a question mark]

Dear Todd:

Pursuant to your client's request that their original files be transferred to you, accompanying this letter you will find 2 boxes containing the above-captioned original client files.

By your signature below indicating receipt of these files, you also agree that you will preserve them in their entirety for ten (10) years from the date hereof (or in accordance with your firm's records retention policy) and grant this firm (Pepe & Hazard) reasonable access should that become necessary.

Please indicate your receipt of these files by signing this letter below and returning the original to me as soon as possible.

Sincerely,

Cynthia Trefethen-LeMay
Cynthia Trefethen-LeMay
Records Manager

RECEIVED AND AGREED:

DATE: _____

Todd S. Sharinn

Dear Todd:

Pursuant to your client's request that their original files be transferred to you, accompanying this letter you will find 2 boxes containing the above-captioned original client files.

By your signature below indicating receipt of these files, you also agree that you will preserve them in their entirety for ten (10) years from the date hereof (or in accordance with your firm's records retention policy) and grant this firm (Pepe & Hazard) reasonable access should that become necessary.

Please indicate your receipt of these files by signing this letter below and returning the original to me as soon as possible.

Sincerely,

Cynthia Trefethen-LeMay
Cynthia Trefethen-LeMay
Records Manager

RECEIVED AND AGREED:

DATE: _____

Todd S. Sharinn

EXHIBIT 7

As of October 27, 2006 we have no response from Todd Sharinn.

EXHIBIT 8

Timothy J. Maier

From: <BeigheyD@gtlaw.com>
To: <tjm@maierandmaier.com>
Sent: Friday, October 20, 2006 5:06 PM
Attach: Digital_.pdf
Subject: U.S. Patent No. 6,066,160 of Quickie, LLC/Dr. Stephen Colvin

Dear Mr. Maier, As we discussed this afternoon, the attached correspondence has been forwarded to me in my capacity as assistant general counsel for Greenberg Traurig, LLP ("Greenberg Traurig"). We will be reviewing the applicable files and will get back to you with our response to your request for documents as soon as possible. In the meantime, if there is anything that you would like to discuss further, please feel free to contact me by e-mail or phone (305/579-0795). Thank you, Dawn Beighey

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

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MAIER & MAIER, PLLC
INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

October 17, 2006

Mr. Richard A. Rosenbaum / Chris Bianco IP docketing Specialist
Greenberg Traurig, LLP
MetLife Building,
200 Park Avenue,
New York, NY 10166

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Quickie, LLC / Dr. Stephen Colvin

Dear Mr. Rosenbaum and Mr. Bianco:

Further to our letter of September 26, 2006 (attached) we have received no information from your firm regarding the above-referenced matter. We are currently under the duty of diligence before the USPTO in this petition matter under rule 37 C.F.R. 1.378(b).

Accordingly, we need any and all information related to Application No. 09/198,087, U.S. Patent No. 6,066,160, Re-Examination 90/006,460 filed November 25, 2002 and Re-Examination 90/007,085 filed June 30, 2004. In conjunction with these matters, to establish ownership and responsibility for these matters, we also immediately need the following information:


1. Dates Mr. Todd S. Sharinn was employed by Greenburg, Traurig, LLP.
2. Copies of any file engagement agreement/ law firm agreement/ client retainer or fee agreement with Quickie, LLC / Alan Fell / Dr. Colvin / and/or Todd S. Sharinn.
3. Copies of any file transfer letters relating to the above-referenced matters, including but not limited to, transfer to or from Todd S. Sharinn's personal law firm or individually to Greenburg Traurig, transfer to or from Thelen, Reid & Priest from Greenburg Traurig or any other law firm or corporate entity or party.
4. Copies of any docketing records relating to any of the above-referenced matters that were maintained on Greenburg's docketing system at any time.
5. Copies of any correspondence related to the handling or transfer of Quickie, LLC's/ Alan Fell's/ Dr. Colvin's patent, or any other relevant documents or records that you could provide regarding this matter, we would greatly appreciate it.

If you intend to be of assistance in this matter, please contact us by **October 20, 2006**.

If you have any questions or need clarification regarding the information I am requesting please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com). We greatly appreciate any information, data or records that you may be able to provide to us to comply with our diligence requirements.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in dark ink, appearing to read 'TJM', is written over a horizontal line.

Timothy J. Maier
Reg. No. 51986

TJM:cjm:
Enclosure(s):Sept. 26, 2006 letter

MAIER & MAIER, PLLC

INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

September 26, 2006

Mr. Charles Berman / Intellectual Property Department
Greenberg Traurig, LLP
885 Third Avenue, 21st Floor
New York, NY 10022

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Dr. Stephen B. Colvin

To Whom It May Concern:

Our firm, Maier & Maier, PLLC, was recently retained to represent Dr. Stephen B. Colvin his company, Quickie LLC due to his patent attorney having a conflict. Specifically, we have been asked to represent Quickie, LLC and Dr. Colvin before the USPTO in an attempt to revive an issued patent that unavoidably expired. We are therefore preparing to file a petition with the USPTO that, pursuant to 37 CFR §1.378, MPEP §2590 and MPEP §711.03, contains a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

Accordingly, we are contacting each of the previous firms that handled or had custody of Dr. Colvin's / Quickie's patent application (Application No. 09/198,087) and the corresponding U.S. patent (Patent No. 6,066,160). We believe that Mr. Todd S. Sharinn may have been most closely associated with this case while at your firm. We kindly request copies of any engagement agreements with Quickie, LLC, and any transfer letters relating to this application or patent and any docketing records that you would be willing to provide to us. Additionally, if there is any other correspondence related to the handling or transfer of Quickie, LLC's patent, or

October 17, 2006

Page 2

documents or records that you could provide regarding this matter, we would greatly appreciate it. If you can be of assistance in this matter, please contact us by **October 4, 2006**.

Please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com) if you would like to discuss this matter with me. We greatly appreciate any information, data or records that you may be able to provide to us.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in black ink, appearing to read 'TJM', is written over a horizontal line.

Timothy J. Maier
Reg. No. 51986

TJM:cjm:

Enclosure(s):

EXHIBIT 9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|---|------------------|-------------------|
| In re application of: | U.S. Patent No.: | 6,066,160 |
| Colvin <i>et al.</i> | Filed: | November 23, 1998 |
| Appl. No. 09/198,087 | Issued: | May 23, 2000 |
| For: Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing | Art Unit: | 3731 |

Statement in Support of Petition Under 37 C.F.R. § 1.378(b)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the requirements of 37 C.F.R. § 1.378(b) and M.P.E.P. § 2590, Petitioner makes the following declaration.

I, Aubrey C. Galloway, hereby declare:

- (1) I am a Professor, Vice Chairman and Director of Cardiac Surgical Research at NYU Medical Center and I am the Managing Partner of Quickie, LLC, the owner of US Patent No. 6,066,160.
- (2) As the Managing Partner for Quickie, LLC, I retained Robert E. Krebs *et al.* of the Thelen, Reid & Priest, LLP law firm to transact all post-issuance proceedings and responsibilities in the Patent and Trademark Office including, but not limited to reexamination proceedings and timely payment of the maintenance fee.

- 2 -

Colvin *et al.*
Appl. No. 09/198,087

- (3) As Managing Partner for Quickie, LLC, I retained the law firm of Thelen, Reid & Priest to concurrently conduct litigation services for Quickie, LLC.

Conclusion

I declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements or the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity and enforceability of the '160 patent.

Respectfully submitted,


Aubrey C. Galloway, MD

Date: 10/27/06

c/o Maier & Maier, PLLC
128 North Pitt Street, Second Floor
Alexandria, VA 22314
(703) 740-8322

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

CONTROL NO.: 90/006,460

PATENT NO.: 6,066,160

FILING DATE: November 25, 2002

TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN
MINIMALLY INVASIVE SURGERY AND TO FACILITATE
STANDARD TISSUE SECURING

EXAMINER: Woo, J.

ART UNIT: 3731

Commissioner for Patents

POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST
(REVOCATION OF PRIOR POWERS)

REVOCATION OF PRIOR POWERS OF ATTORNEY

all powers of attorney previously given are hereby revoked and

NEW POWER OF ATTORNEY

the following attorney(s) and/or agent(s) are hereby appointed to prosecute and
transact all business in the Patent and Trademark Office connected therewith.

Robert E. Krebs, Registration No. 25,885; David B. Ritchie, Registration No. 31,562; Marc S. Hanish, Registration
No. 42,626; John P. Schaub, Registration No. 42,125; Adrienne Yeung, Registration No. 44,000; Steven J.
Robbins, Registration No. 40,299; Thierry K. Lo, Registration No. 49,097; William Samuel Niece, Registration No.:
47,824; J. Davis Gilmer, Registration No. 44,711; William E. Winters, Registration No. 42,232; Masako Ando, (37
C.F.R. §10.9 (b)); and John Klass Uilkema, Registration No. 20,282; Becky L. Troutman, Registration No. 36,703;
Hal J. Bohner, Registration No. 27,856;

Quickie, LLC

(type or print identity of assignee of entire interest)

3 New York Plaza
Attn: Alan Fell
New York, NY 10004

Address

Recorded in PTO on 11/23/1998

Reel 9608

Frame 0640

ASSIGNEE STATEMENT

The undersigned states that he is authorized to act on behalf of the assignee.

Date

3/4/03

Signature

Aubrey C. Gallouay

*(type or print name of person authorized to sign
on behalf of assignee)*

Title

Managing Partner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

CONTROL NO.: 90/006,460

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STANDARD TISSUE SECURING

EXAMINER: Woo, J.

ART UNIT: 3731

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

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Date: 12/5/03

Name:

Annette Valdivia

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

CHANGE OF ATTORNEY DOCKET NUMBER
AND CHANGE OF ADDRESS NOTICE

Please change the Attorney Docket No. for this patent application to 034521-003.

Please address all further communications regarding this application to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Telephone (408) 292-5800; Facsimile (408) 287-8040

Dated:

12/2/03

Respectfully submitted,

THELEN REID & PRIEST LLP

Robert E. Krebs
Reg. No. 25,885

Thelen Reid & Priest LLP
Attorneys At Law

225 West Santa Clara Street, Suite 1200
San Jose, CA 95113-1723

Tel. 408.292.5800
Fax 408.287.8040
www.thelenreid.com

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Date: December 5, 2003

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Fax: 703.872.9306
Phone:

OFFICIAL

From: Annette Valdivia

Fax:
Phone: 408/282-1818
E-Mail: avaldivia@thelenreid.com

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Date: 12/5/03

Signature:

Annette Valdivia
Annette Valdivia

RE: Control No. 90/006,460
Filed: November 25, 2002
Docket No: 034521-003

Dear Sir or Madam:

Respectfully submitted is the following:

1. Change of attorney docket number and change of address notice

If you have any questions, please do not hesitate to contact us.

Regards,
Annette Valdivia

In case of a problem with this transmission, please call the Fax Operator at 408.282.1866

| JOB # | ATTORNEY # | CLIENT-MATTER | RETURN TO | ROOM # |
|-------|------------|---------------|-----------|--------|
| | 40935 | 034521-003 | | |

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SV #150497 v1

Attorney Docket No. 034521-003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

CONTROL NO.: 90/006,460

PATENT NO.: 6,066,160

FILING DATE: November 25, 2002

TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN
MINIMALLY INVASIVE SURGERY AND TO FACILITATE
STANDARD TISSUE SECURING

EXAMINER: Woo, J.

ART UNIT: 3731

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Name:

Annette Valdivia

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

CHANGE OF ATTORNEY DOCKET NUMBER
AND CHANGE OF ADDRESS NOTICE

Please change the Attorney Docket No. for this patent application to 034521-003.

Please address all further communications regarding this application to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Telephone (408) 292-5800; Facsimile (408) 287-8040

Respectfully submitted,

THELEN REID & PRIEST LLP

Robert E. Krebs

Reg. No. 25,885

Dated:

12/2/03

EXHIBIT 10

Robert E. Krebs
408.282.1823 Direct Dial
408.278.8223 Direct Fax
rkrebs@thelenreid.com

225 West Santa Clara Street, Suite 1200
San Jose, CA 95113
Tel. 408.292.5800
Fax 408.287.8040
www.thelenreid.com

October 25, 2006

Timothy J. Maier, Esq.
Maier & Maier, PLLC
128 North Pitt Street, Second Floor
Alexandria, Virginia 22314

Re: **U.S. Patent No. 6,066,160**

Dear Mr. Maier:

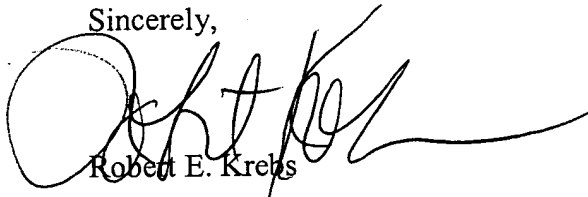
Thank you for your letter dated September 26, 2006, concerning the patent identified above.

As you know, the litigation work concerning this patent was handled by Mark Evens who, at the time, was in Thelen Reid's office in Washington, D.C. I do not have those files. However, I will address the files which were in Thelen Reid's office in San Jose, California relating to two re-examinations of the '160 patent. The files which were in this office of Thelen Reid have been sent to another law firm pursuant to instruction from the client.

We are sending you copies herewith relating to the two re-examinations of the '160 patent, which we obtained from public PAIR of the US Patent and Trademark Office.

Notice of Acceptance of Power of Attorney
Notice Regarding Change of Power of Attorney
Power of Attorney by Assignee of Entire Interest
Change of Attorney Docket Number and Change of Address Notice

Sincerely,



Robert E. Krebs

REK/bam
Enclosures

Timothy J. Maier

From: "Blum, Robert" <rblum@thelenreid.com>
To: "Timothy J. Maier" <tjm@maierandmaier.com>
Sent: Thursday, October 26, 2006 2:23 PM
Subject: RE: USP 6,066,160

Thank you. I will look into this, and we will respond substantively as soon as possible.

Robert M. Blum
Partner and General Counsel
Thelen Reid & Priest LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3606
Main Phone: 415.371.1200
Main Fax: 415.371.1211
Direct Phone: 415.369.7277
Direct Fax: 415.369.8615
rblum@thelenreid.com

=====

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=====

==

-----Original Message-----

From: Timothy J. Maier [mailto:tjm@maierandmaier.com]
Sent: Thursday, October 26, 2006 7:30 AM
To: Blum, Robert
Subject: USP 6,066,160
Importance: High

Dear Mr. Blum,

Please see the attached correspondence. Confirmation via courier.

Best Regards,

Timothy J. Maier*
Maier & Maier, PLLC
128 North Pitt Street, 2nd Floor
Alexandria, VA 22314

10/26/2006

MAIER & MAIER, PLLC
INTELLECTUAL PROPERTY LAW
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ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

September 26, 2006

Mr. Robert E. Krebs
Thelen Reid & Priest LLP
225 West Santa Clara Street
Suite 1200
San Jose, CA 95113

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Dr. Stephen B. Colvin

Dear Mr. Krebs:

Our firm, Maier & Maier, PLLC, was recently retained to represent Dr. Stephen B. Colvin and Quickie, LLC due to his patent attorney having a conflict. Specifically, we have been asked to represent Dr. Colvin and Quickie, LLC before the USPTO in an attempt to revive an issued patent that unavoidably expired. We are therefore preparing to file a petition with the USPTO that, pursuant to 37 CFR §1.378, MPEP §2590 and MPEP §711.03, contains a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

Accordingly, we are contacting each of the previous firms that handled or had custody of Quickie's / Dr. Colvin's patent application (Application No. 09/198,087) and the corresponding U.S. patent (Patent No. 6,066,160). We kindly request copies of any engagement agreements with Dr. Colvin or Quickie, LLC, any transfer letters relating to this application or patent and any docketing records that you would be willing to provide to us. Additionally, if there is any other correspondence related to the handling or transfer of Quickie's patent, or any other relevant

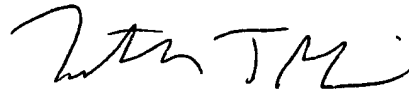
October 17, 2006
Page 2

documents or records that you could provide regarding this matter, we would greatly appreciate it. If you can be of assistance in this matter, please contact us by **October 4, 2006**.

Please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com) if you would like to discuss this matter with me. We greatly appreciate any information, data or records that you may be able to provide to us.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in dark ink, appearing to read 'TJM', is written over a horizontal line.

Timothy J. Maier
Reg. No. 51986

TJM:cjm:
Enclosure(s):

EXHIBIT 11



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90/006,460 PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE AND TO FACILITATE STANDARD TISSUE SECURING

| Application Data | Transaction History | Image File Wrapper | Continuity Data | Address & Attorney/Agent |
|------------------|---------------------|--------------------|-----------------|--------------------------|
|------------------|---------------------|--------------------|-----------------|--------------------------|

Bibliographic Data

| | | |
|-------------------------|--|-----------------------|
| Application Number: | 90/006,460 | Customer: |
| Filing or 371 (c) Date: | 11-25-2002 | Status: |
| Application Type: | Re-Examination | Status Disposition: |
| Examiner Name: | WOO, JULIAN W | Location: |
| Group Art Unit: | 3731 | Location: |
| Confirmation Number: | 3789 | Earliest Filing Date: |
| Attorney Docket Number: | 034521-003 | Earliest Filing Date: |
| Class / Subclass: | 606/232 | Patent Number: |
| First Named Inventor: | Quickie Llc(Owner) , New York, NY (US) | Issue Date: |

Title of Invention: **PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE AND TO FACILITATE STANDARD TISSUE SECURING**

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90/006,460

PASSIVE KNOTLESS SUTURE TERMINATOR FOR US AND TO FACILITATE STANDARD TISSUE SECURING

| | | | | |
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| Application Data | Transaction History | Image File Wrapper | Continuity Data | Address & Attorney/Agent |
|------------------|---------------------|--------------------|-----------------|--------------------------|

Transaction History

| Date | Transaction Description |
|------------|--|
| 07-11-2006 | Change in Power of Attorney (May Include Associate |
| 06-30-2006 | Reexam Forwarded to Office of Publications |
| 06-26-2006 | Notice of Intent to Issue a Reexam Certificate |
| 03-30-2006 | Reexam returned to TC for correction/completion |
| 10-24-2005 | Miscellaneous Incoming Letter |
| 10-24-2005 | Certificate of Service |
| 10-24-2005 | Miscellaneous Incoming Letter |
| 10-04-2005 | Notice of Intent to Issue a Reexam Certificate |
| 07-19-2005 | Response after Non-Final Action |
| 06-22-2005 | Examiner Interview Summary Record |
| 06-20-2005 | Response after Non-Final Action |
| 04-04-2005 | Reexam Litigation Search Conducted |
| 04-18-2005 | Reexam Non-Final Action Mailed |
| 02-01-2005 | Date Forwarded to Examiner |
| 01-11-2005 | Response after Non-Final Action |
| 12-09-2004 | Decision Merging Proceedings |
| 08-16-2004 | Response after Non-Final Action |
| 08-06-2004 | Certificate of Service |
| 07-30-2004 | Miscellaneous Incoming Letter |
| 08-06-2004 | Letter Acknowledging That an Improper Paper Has B |
| 07-20-2004 | Notification of Informal or Nonresponsive Amendmen |
| 07-09-2004 | Workflow incoming petition IFW |
| 07-01-2004 | Scanned in Central Reexam Unit |
| 06-07-2004 | Response after Non-Final Action |
| 05-28-2004 | Examiner Interview Summary Record |

| | |
|------------|--|
| 05-25-2004 | Examiner Interview Summary Record |
| 05-27-2004 | Correspondence Address Change |
| 04-12-2004 | Scanned in Central Reexam Unit |
| 04-02-2004 | Reexam Non-Final Action Mailed |
| 04-02-2004 | Change in Power of Attorney (May Include Associate |
| 12-05-2003 | Correspondence Address Change |
| 04-02-2004 | Correspondence Address Change |
| 03-04-2004 | Date Forwarded to Examiner |
| 07-15-2003 | Scanned in Central Reexam Unit |
| 05-05-2003 | Timely Requestor's Reply to an Owner's Statement |
| 03-24-2003 | Timely Owner Statement in Response to Order |
| 01-22-2003 | Scanned in Central Reexam Unit |
| 01-16-2003 | Determination -- Reexam Ordered |
| 01-09-2003 | Date Forwarded to Examiner |
| 01-08-2003 | Case Docketed to Examiner in GAU |
| 12-20-2002 | Scanned in Central Reexam Unit |
| 12-18-2002 | Completion of Preprocessing - Released to Assigned |
| 12-18-2002 | Application Is Now Complete |
| 01-07-2003 | Notice of Reexam Published in Official Gazette |
| 12-16-2002 | Miscellaneous Incoming Letter |
| 12-16-2002 | Correspondence Address Change |
| 11-25-2002 | Receipt of Original Ex Parte Reexam Request |

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198087 (09) 6066160 May 23, 2000

Time of Request: April 04, 2005 12:44 PM EDT

Research Information:

Utility, Design and Plant Patents
patno=6066160

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

6066160

May 23, 2000

Passive knotless suture terminator for use in minimally invasive surgery and to facilitate
standard tissue securing

REEXAM-LITIGATE: November 25, 2002 - Reexamination requested by Medtronic, Inc., Reexamination No.
90/006,460 (O.G. January 7, 2003) Ex. Gp: 3731

June 16, 2004 - Reexamination requested by Kenneth L. Cage, Reexamination No. 90/007,016 (O.G. August 3, 2004)
Ex. Gp: 3731

APPL-NO: 198087 (09)

FILED-DATE: November 23, 1998

GRANTED-DATE: May 23, 2000

ASSIGNEE-AT-ISSUE: Quickie LLC, New York, New York, United States (US), 02

ASSIGNEE-AFTER-ISSUE: November 23, 1998 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE
DOCUMENT FOR DETAILS), QUICKIE, LLC ATTN: ALAN FELL 3 NEW YORK PLAZA NEW YORK NEW
YORK 10004, Reel and Frame Number: 09608/0640

LEGAL-REP: Pepe & Hazard



11/25/02



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REQUEST FOR EX PARTE REEXAMINATION TRANSMITTAL FORM

Address to:

Assistant Commissioner for Patents
Box Reexam
Washington, D.C. 20231

Attorney Docket No.

Date: November 22, 2002

1. ☒ This is a request for *ex parte* reexamination pursuant to 37 CFR 1.510 of patent number 6,066,160 issued May 23, 2000. This request is made by:

☐ patent owner. ☒ third party requester.

2. ☒ The name and address of the person requesting reexamination is:

Medtronic, Inc.
710 Medtronic Parkway
Minneapolis, MN 55432

3. ☐ a. A check in the amount of \$ _____ is enclosed to cover the reexamination fee, 37 CFR 1.20(c)(i);

☒ b. The Commissioner is hereby authorized to charge the fee as set forth in 37 CFR 1.20(c)(i) to Deposit Account No. 13-2546; or

☐ c. Payment by credit card. Form PTO-2038 is attached.

4. ☒ Any refund should be made by ☐ check or ☒ credit to Deposit Account No. 13-2546. 37 CFR 1.26(c). If payment is made by credit card, refund must be to credit card account.

5. ☒ A copy of the patent to be reexamined having a double column format on one side of a separate paper is enclosed. 37 CFR 1.510(b)(4)

6. ☐ CD-ROM or CD-R in duplicate, Computer Program (Appendix) or large table

7. ☐ Nucleotide and/or Amino Acid Sequence Submission
If applicable, all of the following are necessary

a. ☐ Computer Readable Form (CRF)

b. Specification Sequence Listing on:

i. ☐ CD-ROM (2 copies) or CD-R (2 copies); or

ii. ☐ paper

c. ☐ Statements verifying identity of above copies

8. ☐ A copy of any disclaimer, certificate of correction or reexamination certificate issued in the patent is included.

9. ☒ Reexamination of claim(s) 13, 18-20, 22 and 33 is requested.

10. ☒ A copy of every patent or printed publication relied upon is submitted herewith including a listing thereof on Form PTO-1449.

11. ☐ An English language translation of all necessary and pertinent non-English language patents and/or printed publications is included.

[Page 1 of 2]

Burden Hour Statement. This form is estimated to take 20 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO Assistant Commissioner for Patents, Box Reexam, Washington, DC 20231.

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01 FC:1812

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12. ☒ The attached detailed request includes at least the following items:
- A statement identifying each substantial new question of patentability based on prior patents and printed publications. 37 CFR 1.510(b)(1)
 - An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited art to every claim for which reexamination is requested. 37 CFR 1.510(b)(2)
13. ☐ A proposed amendment is included (only where the patent owner is the requester). 37 CFR 1.510(e)
14. ☒ a. It is certified that a copy of this request (if filed by other than the patent owner) has been served in its entirety on the patent owner as provided in 37 CFR 1.33(c).
The name and address of the party served and the date of service are:
Todd S. Sharinn (By Mail)
Bryan Cave LLP
245 Park Avenue, 28th Floor
New York, NY 10167
 Date of Service: 11-22-2002; or
- ☐ b. A duplicate copy is enclosed since service on patent owner was not possible.

15. ☒ Correspondence Address: Direct all communication about the reexamination to:

☒ Customer Number 27581 →

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| | | | | | |
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| Address (line 1) | | | | | |
| Address (line 2) | | | | | |
| City | | State | | Zip | |
| Country | | | | | |
| Telephone | | Fax | | | |

16. ☒ The patent is currently the subject of the following concurrent proceeding(s):
- ☐ Copending reissue Application No. _____
 - ☐ Copending reexamination Control No. _____
 - ☐ Copending Interference No. _____
 - ☒ Copending litigation styled:
Quickie L.L.C. v. Medtronic, Inc, 02CIV1157(GEL)
U.S. District Court, Southern District of New York

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 Authorized Signature

11/22/2002
 Date

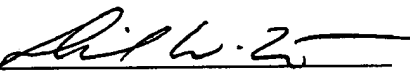
- ☐ For Patent Owner Requester
☒ For Third Party Requester

When substituting cams for the deflectable members, at least one obvious orientation would therefore be to have their free ends directed toward the center of the device, so that they also would have mirror image counterparts. Another obvious orientation would be to have adjacent cams and recesses be mirror images of one another, as in the Creager patent. As set forth in the above text and claim charts, substitution of cams located within the apertures, as in the Creager patent, would thus produce the invention as claimed.

As set forth in the claim charts above, even if claim 33 is not anticipated by the '684 Creager patent, it is believed that all limitations of claim 33 are obvious over the '684 Creager patent in combination with the Shepherd '188 patent and that Claim 33 is thus invalid under 35 USC Section 103.

Respectfully submitted,

Date 11/22/2002

By 
Daniel W. Latham, Reg. No. 30,401
Senior Patent Attorney
Tel. 763.391.9661
Fax. 763.391.9668



27581



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90/007,085

PASSIVE KNOTLESS SUTURE TERMINATOR FOR US AND TO FACILITATE STANDARD TISSUE SECURING

| Application Data | Transaction History | Image File Wrapper | Continuity Data | Address & Attorney/Agent |
|------------------|---------------------|--------------------|-----------------|--------------------------|
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Bibliographic Data

| | | |
|-------------------------|-----------------------------------|-----------------------|
| Application Number: | 90/007,085 | Customer: |
| Filing or 371 (c) Date: | 06-16-2004 | Status: |
| Application Type: | Re-Examination | Status Date: |
| Examiner Name: | WOO, JULIAN W | Location: |
| Group Art Unit: | 3731 | Location: |
| Confirmation Number: | 7632 | Earliest Patent Date: |
| Attorney Docket Number: | 034521-003 | Earliest Patent Date: |
| Class / Subclass: | 606/232 | Patent Number: |
| First Named Inventor: | Quickie Llc(Owner) , New York, NY | Issue Date: |

Title of Invention: PASSIVE KNOTLESS SUTURE TERMINATOR FOR US AND TO FACILITATE STANDARD TISSUE SECURING

If you need help:

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90/007,085

PASSIVE KNOTLESS SUTURE TERMINATOR FOR US AND TO FACILITATE STANDARD TISSUE SECURING

| | | | | |
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Transaction History

| Date | Transaction Description |
|------------|---|
| 07-11-2006 | Change in Power of Attorney (May Include Associate) |
| 07-05-2006 | Workflow - File Sent to Contractor |
| 06-30-2006 | Reexam Forwarded to Office of Publications |
| 06-26-2006 | Notice of Intent to Issue a Reexam Certificate |
| 03-30-2006 | Reexam returned to TC for correction/completion |
| 10-24-2005 | Miscellaneous Incoming Letter |
| 10-24-2005 | Certificate of Service |
| 10-24-2005 | Miscellaneous Incoming Letter |
| 10-04-2005 | Notice of Intent to Issue a Reexam Certificate |
| 07-19-2005 | Response after Non-Final Action |
| 06-20-2005 | Response after Non-Final Action |
| 06-22-2005 | Examiner Interview Summary Record |
| 04-04-2005 | Reexam Litigation Search Conducted |
| 04-18-2005 | Reexam Non-Final Action Mailed |
| 02-01-2005 | Date Forwarded to Examiner |
| 01-11-2005 | Response after Non-Final Action |
| 12-09-2004 | Decision Merging Proceedings |
| 08-16-2004 | Scanned in Central Reexam Unit |
| 08-06-2004 | Determination - Reexam Ordered |
| 08-06-2004 | Letter Acknowledging That an Improper Paper Has B |
| 08-02-2004 | Workflow incoming petition IFW |
| 07-01-2004 | Reexam Assigned to Examiner for Determination |
| 07-01-2004 | Case Docketed to Examiner in GAU |
| 06-28-2004 | Scanned in Central Reexam Unit |
| 06-23-2004 | Completion of Preprocessing - Released to Assigned |

| | |
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| 06-23-2004 | Application Is Now Complete |
| 08-03-2004 | Notice of Reexam Published in Official Gazette |
| 06-16-2004 | Receipt of Original Ex Parte Reexam Request |

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198087 (09) 6066160 May 23, 2000

Time of Request: April 04, 2005 12:44 PM EDT

Research Information:

Utility, Design and Plant Patents
patno=6066160

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

6066160

May 23, 2000

Passive knotless suture terminator for use in minimally invasive surgery and to facilitate
standard tissue securing

REEXAM-LITIGATE: November 25, 2002 - Reexamination requested by Medtronic, Inc., Reexamination No. 90/006,460 (O.G. January 7, 2003) Ex. Gp: 3731

June 16, 2004 - Reexamination requested by Kenneth L. Cage, Reexamination No. 90/007,016 (O.G. August 3, 2004) Ex. Gp: 3731

APPL-NO: 198087 (09)

FILED-DATE: November 23, 1998

GRANTED-DATE: May 23, 2000

ASSIGNEE-AT-ISSUE: Quickie LLC, New York, New York, United States (US), 02

ASSIGNEE-AFTER-ISSUE: November 23, 1998 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., QUICKIE, LLC ATTN: ALAN FELL 3 NEW YORK PLAZA NEW YORK NEW YORK 10004, Reel and Frame Number: 09608/0640

LEGAL-REP: Pepe & Hazard

REQUEST FOR EX PARTE REEXAMINATION TRANSMITTAL FORM

Address to:
Mail Stop Ex Parte Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

66548 U.S. PTO



06/16/04

Attorney Docket No.: 52734-101

Date: June 16, 2004

06/16/04

1. ☒ This is a request for *ex parte* reexamination pursuant to 37 CFR 1.510 of patent number 6,066,160 issued May 23, 2000. The request is made by:

☐ patent owner. ☒ third party requester.

2. ☒ The name and address of the person requesting reexamination is:

Kenneth L. Cage

McDermott, Will & Emery, LLP

600 13th Street, NW, Washington, DC 20005-3096

3. ☐ a. A check in the amount of \$_____ is enclosed to cover the reexamination fee, 37 CFR 1.20(c)(1);

☒ b. The Director is hereby authorized to charge the fee as set forth in 37 CFR 1.20(c)(1) of 2,520.00 to Deposit Account No. 500417 (submit duplicate of this form for fee processing); or

☐ c. Payment by credit card. Form PTO-2038 is attached.

4. ☒ Any refund should be made by ☐ check or ☒ credit to Deposit Account No. 500417. 37 CFR 1.26(c). If payment is made by credit card, refund must be to credit card account.

5. ☒ A copy of the patent to be reexamined having a double column format on one side of a separate paper is enclosed. 37 CFR 1.510(b)(4)

6. ☐ CD-ROM or CD-R in duplicate, Computer Program (Appendix) or large table

7. ☐ Nucleotide and/or Amino Acid Sequence Submission
If applicable, all of the following are necessary.

a. ☐ Computer Readable Form (CRF)

b. Specification Sequence Listing on:

- i. ☐ CD-ROM (2 copies) or CD-R (2 copies); or
ii. ☐ paper

c. ☐ Statements verifying identity of above copies

8. ☐ A copy of any disclaimer, certificate of correction or reexamination certificate issued in the patent is included.

9. ☒ Reexamination of claim(s) 13, 18-20, 22 and 33 is requested.

10. ☒ A copy of every patent or printed publication relied upon is submitted herewith including a listing thereof on Form PTO-1449 or equivalent.

06/23/2004 MTWITTY 88888882 588417 988878.5

11. ☒ An English language translation of all necessary and pertinent non-English language patents and/or printed publications is included.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.510. The information is required to obtain or retain a patent by the public and by the USPTO (to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Ex Parte Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

VI. CONCLUSION

A substantial new question of patentability of claims 13, 18-20, 22 and 33 is raised in

view of:

- (i) the '698 Preissman Patent alone, or considered in view of the '188 Shepherd Patent;
- (ii) the '684 Creager Patent alone, or considered in view of the '188 Shepherd Patent; and/or
- (iii) the '805 Plante Patent alone, considered in view of the '188 Shepherd Patent.

The Requester respectfully submits that the '160 Colvin Patent be reexamined in view of the showing in this Request that a substantial new question of patentability is present.

Respectfully submitted,


Kenneth L. Cagle
Registration No. 26,151

McDermott, Will & Emery
600 13th Street, NW
Washington, D.C. 20005
(202) 756-8000
Date: June 16, 2004
Facsimile (202) 756-8087

CERTIFICATE OF SERVICE

I hereby certify that the attached papers (Associate Power Of Attorney and Change Of Correspondence Address) were served this day, June 16, 2004, on Robert E. Krebs, attorney of record for the Patent Owner, by causing a true copy of said papers to be deposited with the United States Post Office as First Class Mail in an envelope addressed to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640

00007031-051301



Lawrence T. Cullen
McDERMOTT, WILL & EMERY
600 13th Street, N.W.
Washington, DC 20005-3096
Tel: (202) 756-8380

EXHIBIT 12

MAIER & MAIER, PLLC
INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

September 26, 2006

Mr. Charles Berman / Intellectual Property Department
Greenberg Traurig, LLP
885 Third Avenue, 21st Floor
New York, NY 10022

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Dr. Stephen B. Colvin

To Whom It May Concern:

Our firm, Maier & Maier, PLLC, was recently retained to represent Dr. Stephen B. Colvin his company, Quickie LLC due to his patent attorney having a conflict. Specifically, we have been asked to represent Quickie, LLC and Dr. Colvin before the USPTO in an attempt to revive an issued patent that unavoidably expired. We are therefore preparing to file a petition with the USPTO that, pursuant to 37 CFR §1.378, MPEP §2590 and MPEP §711.03, contains a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

Accordingly, we are contacting each of the previous firms that handled or had custody of Dr. Colvin's / Quickie's patent application (Application No. 09/198,087) and the corresponding U.S. patent (Patent No. 6,066,160). We believe that Mr. Todd S. Sharinn may have been most closely associated with this case while at your firm. We kindly request copies of any engagement agreements with Quickie, LLC, and any transfer letters relating to this application or patent and any docketing records that you would be willing to provide to us. Additionally, if there is any other correspondence related to the handling or transfer of Quickie, LLC's patent, or

October 17, 2006

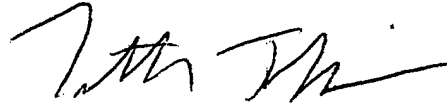
Page 2

documents or records that you could provide regarding this matter, we would greatly appreciate it. If you can be of assistance in this matter, please contact us by **October 4, 2006**.

Please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com) if you would like to discuss this matter with me. We greatly appreciate any information, data or records that you may be able to provide to us.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in black ink, appearing to read 'TJM', is written over a horizontal line.

Timothy J. Maier
Reg. No. 51986

TJM:cjm:
Enclosure(s):

MAIER & MAIER, PLLC
INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

September 26, 2006

Mr. Charles Berman / Intellectual Property Department
Greenberg Traurig, LLP
885 Third Avenue, 21st Floor
New York, NY 10022

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With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in dark ink, appearing to read 'TJM', is written over a horizontal line.

Timothy J. Maier
Reg. No. 51986

TJM:cjm:
Enclosure(s):

MAIER & MAIER, PLLC
INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

September 26, 2006

Mr. Robert E. Krebs
Thelen Reid & Priest LLP
225 West Santa Clara Street
Suite 1200
San Jose, CA 951113

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Dr. Stephen B. Colvin

Dear Mr. Krebs:

Our firm, Maier & Maier, PLLC, was recently retained to represent Dr. Stephen B. Colvin and Quickie, LLC due to his patent attorney having a conflict. Specifically, we have been asked to represent Dr. Colvin and Quickie, LLC before the USPTO in an attempt to revive an issued patent that unavoidably expired. We are therefore preparing to file a petition with the USPTO that, pursuant to 37 CFR §1.378, MPEP §2590 and MPEP §711.03, contains a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

Accordingly, we are contacting each of the previous firms that handled or had custody of Quickie's / Dr. Colvin's patent application (Application No. 09/198,087) and the corresponding U.S. patent (Patent No. 6,066,160). We kindly request copies of any engagement agreements with Dr. Colvin or Quickie, LLC, any transfer letters relating to this application or patent and any docketing records that you would be willing to provide to us. Additionally, if there is any other correspondence related to the handling or transfer of Quickie's patent, or any other relevant

October 17, 2006

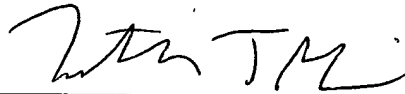
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Very truly yours,
MAIER & MAIER, PLLC

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Timothy J. Maier
Reg. No. 51986

TJM:cjm:
Enclosure(s):

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(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

October 17, 2006

Sheila P. Klapatch
Pepe & Hazard LLP
225 Asylum St.
Hartford, CT 06103

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Quickie, LLC

Dear Ms. Klapatch:

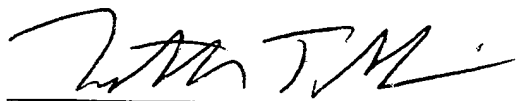
Thank you for your letter Dated October 3, 2006. You included letters dated:

1. May 1, 2001 to Quickie, LLC with the listing of files to be transferred signed by Alan Fell on behalf of Quickie, LLC, and
2. May 21, 2001 to Todd S. Sharinn listing the files to be transferred to his personal law firm from Pepe Hazard.

We believe that the information and letters you provided clear Pepe Hazard from any responsibility for the expiration of the above-referenced patent for failure to timely pay the first maintenance fee. We appreciate your willingness to offer additional assistance. We may be in touch in the future should we require any assistance.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC



Timothy J. Maier
Reg. No. 51986

TJM:cjm:
Enclosure(s):

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Device ID: LVLK-POS2
Employee: 550958
Transaction: 110088220867

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PRIORITY OVERNIGHT

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PRIORITY OVERNIGHT

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- ☐ FedEx 2Day
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Third business day.** Saturday Delivery NOT available.

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5 Packaging

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- ☐ HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods? One box must be checked.

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Company Maier & Maier PLLC
Address 128 N. Pitt St. 2nd Floor
City Alexandria **State** VA **ZIP** 22314

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Company Thalen Reid & Priest LLP
Recipient's Address 225 West Santa Clara St.
Address Suite 1200
City San Jose **State** CA **ZIP** 95113

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☐ **FedEx Standard Overnight**
 Next business afternoon.* Saturday Delivery NOT available.
☐ **FedEx First Overnight**
 Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.
☐ **FedEx 2Day**
 Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ **FedEx Express Saver**
 Third business day.* Saturday Delivery NOT available.
 * To most locations.

4b Express Freight Service

Packages over 150 lbs.

☐ **FedEx 1Day Freight***
 Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ **FedEx 2Day Freight**
 Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ **FedEx 3Day Freight**
 Third business day.** Saturday Delivery NOT available.
 * Call for Confirmation. ** To most locations.

5 Packaging

☒ **FedEx Envelope*** ☐ **FedEx Pak*** Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak. ☐ **FedEx Box** ☐ **FedEx Tube** ☐ **Other**
 * Declared value limit \$500.

6 Special Handling

Include FedEx address in Section 3.

☐ **SATURDAY Delivery**
 NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
☐ **HOLD Weekday**
 at FedEx Location NOT Available for FedEx First Overnight.
☐ **HOLD Saturday**
 at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.
 Does this shipment contain dangerous goods?
☒ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry ice, 9, UN 1845 ☐ Cargo Aircraft Only
 Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

☒ **Sender** Acct. No. in Section 1 will be billed. ☐ **Recipient** ☐ **Third Party** ☐ **Credit Card** ☐ **Cash/Check**

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages 1 **Total Weight** 13 **Total Declared Value*** \$ 100

*Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

8 NEW Residential Delivery Signature Options If you require a signature, check Direct or Indirect.

☐ **No Signature Required**
 Packages may be left without obtaining a signature for delivery.
☐ **Direct Signature**
 Anyone at recipient's address may sign for delivery. Fee applies.
☐ **Indirect Signature**
 If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. Fee applies.

520

Schedule a pickup at fedex.com
 Simplify your shipping. Manage your account. Access all the tools you need.

FedEx® US Airbill

Express

FedEx Tracking Number 8589 1005 7436

FROM Please print and press hard.

Date 10/17/06 Sender's FedEx Account Number 3257-8492-0

Sender's Name Tim Maier Phone (703) 740-8322

Company Maier & Maier PLLC 2nd Floor

Address 128 N. Pitt St. ~~Alexandria~~

City Alexandria State VA ZIP 22314

Your Internal Billing Reference OPTIONAL

To Recipient's Name Richard A. Rosenbaum Phone ()

Company Greenberg Traurig, LLP

Recipient's Address MetLife Building

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address 200 Park Avenue

To request a package be held at a specific FedEx location, print FedEx address here.

City NY State NY ZIP 10166



Sender's Copy

0200

4a Express Package Service

☒ FedEx Priority Overnight Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

☐ FedEx Standard Overnight Next business afternoon.* Saturday Delivery NOT available.

☐ FedEx First Overnight Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.

☐ FedEx 2Day Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

☐ FedEx Express Saver Third business day.* Saturday Delivery NOT available.

* To most locations.

4b Express Freight Service

☐ FedEx 1Day Freight* Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

☐ FedEx 2Day Freight Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

☐ FedEx 3Day Freight Third business day.** Saturday Delivery NOT available.

** To most locations.

* Call for Confirmation.

5 Packaging

☒ FedEx Envelope* ☐ FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak. ☐ FedEx Box ☐ FedEx Tube ☐ Other

* Declared value limit \$500.

6 Special Handling

Include FedEx address in Section 3.

☐ SATURDAY Delivery NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 2Day Freight.

☐ HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight.

☐ HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods? One box must be checked.

☒ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry Ice, 9, UN 1845 x 10 ☐ Cargo Aircraft Only

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

☐ Sender Acct. No. in Section 1 will be billed. ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages 1 Total Weight 13 Total Declared Value* \$.00

*Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. FedEx Use Only

8 NEW Residential Delivery Signature Options

If you require a signature, check Direct or Indirect.

☐ No Signature Required Package may be left without obtaining a signature for delivery.

☐ Direct Signature Anyone at recipient's address may sign for delivery. Fee applies.

☐ Indirect Signature If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. Fee applies.

520

RETAIN THIS COPY FOR YOUR RECORDS.

FedEx® US Airbill

Express

FedEx Tracking Number 8589 1005 7789

From Please print and press hard.

Date 10/17/06 Sender's FedEx Account Number 3257-8492-0

Sender's Name Tim Maier Phone 703 1740-8322

Company Maier & Maier PLLC

Address 128 N. Rth St. 2ND Floor

City Alexandria State VA ZIP 22314

Our Internal Billing Reference

First 24 characters will appear on invoice.

OPTIONAL

To Recipient's Name Todd S. Sharinn Phone ()

Company Baker & McKenzie LLP

Recipient's Address 1114 Avenue of the Americas

City NY State NY ZIP 10036

If request a package be held at a specific FedEx location, print FedEx address here.



4a Express Package Service

- ☒ FedEx Priority Overnight Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Standard Overnight Next business afternoon.* Saturday Delivery NOT available.
- ☐ FedEx First Overnight Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.
- ☐ FedEx 2Day Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected. FedEx Envelope rate not available. Minimum charge: One-pound rate.
- ☐ FedEx Express Saver Third business day.* Saturday Delivery NOT available.

* To most locations.

4b Express Freight Service

- ☐ FedEx 1Day Freight* Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx 2Day Freight Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx 3Day Freight Third business day.** Saturday Delivery NOT available.

* Call for Confirmation.

** To most locations.

5 Packaging

- ☒ FedEx Envelope* ☐ FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak. ☐ FedEx Box ☐ FedEx Tube ☐ Other

* Declared value limit \$500.

6 Special Handling

- ☐ SATURDAY Delivery NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 2Day Freight.
- ☐ HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight.
- ☐ HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.
- Does this shipment contain dangerous goods? One box must be checked.
- ☒ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required.
- Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.
- ☐ Dry Ice Dry ice, 9 UN 1845 x kg ☐ Cargo Aircraft Only

7 Payment Bill to:

- Enter FedEx Acct. No. or Credit Card No. below.
- ☒ Sender Acct. No. in Section 1 will be billed. ☐ Recipient ☐ Third Party ☐ Credit Card ☒ Cash/Check

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages 1 Total Weight 15 Total Declared Value† \$.00

† Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. FedEx Use Only

8 NEW Residential Delivery Signature Options

If you require a signature, check Direct or Indirect.

- ☐ No Signature Required Package may be left without obtaining a signature for delivery.
- ☐ Direct Signature Anyone at recipient's address may sign for delivery. Fee applies.
- ☐ Indirect Signature If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. Fee applies.

520

FedEx US Airbill
Express

FedEx Tracking Number **8573 4548 6034**

Form 1010

0200

Sender's Copy

From Please print and press hard.
Date **9-26-06** Sender's FedEx Account Number
Sender's Name **Tina Maier** Phone ()
Company **Maier and Maier, PLLC**
Address **128 North Pitt Street, Second Floor**
City **Alexandria** State **VA** ZIP **22314**

four Internal Billing Reference

OPTIONAL

To Recipient's Name **Mr. Charles Berman** Phone ()
Company **Greenberg Traurig, LLP**
Recipient's Address **885 Third Avenue, 21st Floor**
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address **A**
request a package be held at a specific FedEx location, print FedEx address here.
City **New York** State **NY** ZIP **10022**



4a Express Package Service

- ☒ **FedEx Priority Overnight**
Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ **FedEx Standard Overnight**
Next business afternoon.* Saturday Delivery NOT available.
- ☐ **FedEx 2Day**
Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ **FedEx Express Saver**
Third business day.* Saturday Delivery NOT available.

Packages up to 150 lbs.

☐ **FedEx First Overnight**
Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.

* To most locations.

4b Express Freight Service

- ☐ **FedEx 1Day Freight***
Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ **FedEx 2Day Freight**
Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

Packages over 150 lbs.

☐ **FedEx 3Day Freight**
Third business day.** Saturday Delivery NOT available.

** To most locations.

* Call for Confirmation:

5 Packaging

- ☒ **FedEx Envelope***
- ☐ **FedEx Pak***
Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.
- ☐ **FedEx Box**
- ☐ **FedEx Tube**
- ☐ **Other**

* Declared value limit \$500.

6 Special Handling

- ☐ **SATURDAY Delivery**
NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
- ☐ **HOLD Weekday at FedEx Location**
NOT Available for FedEx First Overnight.
- ☐ **HOLD Saturday at FedEx Location**
Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Include FedEx address in Section 3.

Does this shipment contain dangerous goods?
One box must be checked.

- ☒ **No**
- ☐ **Yes**
As per attached Shipper's Declaration.
- ☐ **Yes**
Shipper's Declaration not required.
- ☐ **Dry Ice**
Dry ice, 9, UN 1845

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

☐ **Cargo Aircraft Only**

7 Payment Bill to:

- Enter FedEx Acct. No. or Credit Card No. below.
- ☒ **Sender**
Acct. No. in Section 1 will be billed.
- ☐ **Recipient**
- ☐ **Third Party**
- ☐ **Credit Card**
- ☐ **Cash/Check**

FedEx Acct. No.
Credit Card No.

Exp.
Date

Total Packages

Total Weight

Total Declared Value†

†Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

FedEx Use Only

8 NEW Residential Delivery Signature Options If you require a signature, check Direct or Indirect.

- ☐ **No Signature Required**
Package may be left without obtaining a signature for delivery.
- ☐ **Direct Signature**
Anyone at recipient's address may sign for delivery. Fee applies.
- ☐ **Indirect Signature**
If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. Fee applies.

520

Rev. Date 9/05-Part #15220-©1994-2005 FedEx-PRINTED IN U.S.A. SRF

FedEx® US Airbill

Express

FedEx Tracking Number **8573 4548 5472**

1 From Please print and press hard.
 Date 9-26-06 Sender's FedEx Account Number _____
 Sender's Name Tina Maier Phone () _____
 Company Mares and Maier, PLLC
 Address 128 North R.H. Street, 2nd Floor Dept./Floor/Suite/Room _____
 City Alexandria State VA ZIP 22314

2 Your Internal Billing Reference
 First 24 characters will appear on invoice. OPTIONAL

3 To
 Recipient's Name Mr. Peter Costas Phone () _____
 Company Pepe and Hazard, LLP
 Recipient's Address _____
 Dept./Floor/Suite/Room _____
 Address 225 Asylum Street
 City Hartford State CT ZIP 06103



4a Express Package Service

☒ FedEx Priority Overnight
 Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ FedEx Standard Overnight
 Next business afternoon.* Saturday Delivery NOT available.
☐ FedEx First Overnight
 Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.
☐ FedEx 2Day
 Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ FedEx Express Saver
 Third business day.* Saturday Delivery NOT available.
 FedEx Envelope rate not available. Minimum charge: One-pound rate. *To most locations.

4b Express Freight Service

☐ FedEx 1Day Freight*
 Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ FedEx 2Day Freight
 Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ FedEx 3Day Freight
 Third business day.** Saturday Delivery NOT available.
 * Call for Confirmation. ** To most locations.

5 Packaging

☒ FedEx Envelope* ☐ FedEx Pak*
 Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.
☐ FedEx Box ☐ FedEx Tube ☐ Other
 * Declared value limit \$500.

6 Special Handling

☐ SATURDAY Delivery NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
☐ HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight.
☐ HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.
 Does this shipment contain dangerous goods?
☒ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry Ice, 9, UN 1845 x _____ kg
 Dangerous goods (including dry ice) cannot be shipped in FedEx packaging. ☐ Cargo Aircraft Only

7 Payment Bill to:

☒ Sender ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check
 Enter FedEx Acct. No. or Credit Card No. below.
 FedEx Acct. No. _____ Exp. Date _____
 Credit Card No. _____

Total Packages 1 Total Weight 10 Total Declared Value* \$.00

* Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability. FedEx Use Only

8 NEW Residential Delivery Signature Options

If you require a signature, check Direct or Indirect.

☐ No Signature Required
 Package may be left without obtaining a signature for delivery.
☐ Direct Signature
 Anyone at recipient's address may sign for delivery. Fee applies.
☐ Indirect Signature
 If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. Fee applies.

520

MAIER & MAIER, PLLC
INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

October 17, 2006

Mr. Robert E. Krebbs
Thelen Reid & Priest LLP
225 West Santa Clara Street
Suite 1200
San Jose, CA 95113

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Quickie, LLC, Dr. Stephen Colvin

Dear Mr. Krebbs:

Further to our letter of September 26, 2006 (attached) we have received no information from your firm regarding the above-referenced matter. We are currently under the duty of diligence before the USPTO in this petition matter under rule 37 C.F.R. 1.378(b).

Accordingly, we need any and all information related to Application No. 09/198,087, U.S. Patent No. 6,066,160, Re-Examination 90/006,460 filed November 25, 2002 and Re-Examination 90/007,085 filed June 30, 2004. In conjunction with these matters, to establish ownership and responsibility for these matters, we also immediately need the following information:

1. Copies of any file engagement agreement/ law firm agreement/ client retainer or fee agreement with Quickie, LLC / Alan Fell / Dr. Colvin / and/or Todd S. Sharinn; Greenburg Traurig, LLP, or Medtronic.
2. Copies of any file transfer letters relating to the above-referenced matters, including but not limited to, transfer to or from Todd S. Sharinn's personal law firm or individually, to or from Greenburg Traurig LLP, or any other law firm or corporate entity or party.
3. Copies of any docketing records relating to any of the above-referenced matters that were maintained on Greenburg's docketing system at any time.
4. Copies of any correspondence related to the handling or transfer of Quickie, LLC's/ Alan Fell's/ Dr. Colvin's patent, or any other relevant documents or records that you could provide regarding this matter, we would greatly appreciate it.

October 17, 2006

Page 2


We are aware that your firm **filed and prosecuted** for the subject patent Re-Examination 90/007,085 which was merged with a prior filed Re-Examination 90/006,460, during the two-year window for timely filing a 37 C.F.R. 1.378 (c) unintentional petition.

If you intend to be of assistance in this matter, please contact us by **October 20, 2006**.

Please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com) if you would like to discuss this matter with me. We greatly appreciate any information, data or records that you may be able to provide to us.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in black ink, appearing to read 'TJM', is written over a horizontal line.

Timothy J. Maier
Reg. No. 51,986

TJM:cjm:
Enclosure(s):

MAIER & MAIER, PLLC
INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

October 17, 2006

Mr. Todd S. Sharinn, Of Counsel
Baker & McKenzie LLP
1114 Avenue of the Americans
New York, NY, 10036

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Quickie, LLC, Dr. Stephen Colvin

Dear Mr. Sharinn:

Further my phone correspondence of October 13, 2006, my client has authorized an hour of your time at your rate of \$500/hr to discuss material information related to the above referenced matter. I look forward to hearing back from you in the very near future.

Attached is a letter previously sent to your prior employer Greenberg Traurig, LLP. We are currently under the duty of diligence before the USPTO in this petition matter under rule 37 C.F.R. 1.378(b).

Accordingly, we need any and all information related to Application No. 09/198,087, U.S. Patent No. 6,066,160, Re-Examination 90/006,460 filed November 25, 2002 and Re-Examination 90/007,085 filed June 30, 2004. In conjunction with these matters, to establish ownership and responsibility for these matters, we also immediately need the following information:

1. Copies of any file engagement agreement/ law firm agreement/ client retainer or fee agreement with Quickie, LLC / Alan Fell / Dr. Colvin / and/or Greenburg Traurig, LLP from you personally or your personal law firm from the time you left Pepe Hazard around May of 2001.
2. Copies of any file transfer letters relating to the above-referenced matters, including but not limited to, transfer to or from your personal law firm or individually, to or from Greenburg Traurig, or any other law firm or corporate entity or party.
3. Copies of any docketing records relating to any of the above-referenced matters that were maintained on Greenburg's docketing system at any time.
4. Copies of any correspondence related to the handling or transfer of Quickie, LLC's/ Alan Fell's/ Dr. Colvin's patent, or any other relevant documents or records that you could provide regarding this matter, we would greatly appreciate it.

October 17, 2006

Page 2

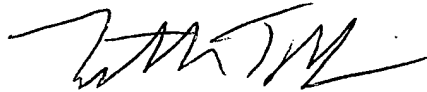
5. Copies of letters showing your dates employment with Greenburg Traurig, LLP.
6. Copies of any correspondence showing that you worked on Re-Examination 90/006,460 filed November 25, 2002.
7. Copies of any letters showing you entered private practice, in particular letters showing docketing of maintenance fees for the above referenced matters after leaving Pepe Hazard, LLP.

If you intend to be of assistance in this matter, please contact us by **October 20, 2006**.

Please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com) if you would like to discuss this matter with me. We greatly appreciate any information, data or records that you may be able to provide to us.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC



Timothy J. Maier
Reg. No. 51,986

TJM:cjm:

Enclosure(s):

MAIER & MAIER, PLLC

INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

October 17, 2006

Mr. Richard A. Rosenbaum / Chris Bianco IP docketing Specialist
Greenberg Traurig, LLP
MetLife Building,
200 Park Avenue,
New York, NY 10166

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Quickie, LLC / Dr. Stephen Colvin

Dear Mr. Rosenbaum and Mr. Bianco:

Further to our letter of September 26, 2006 (attached) we have received no information from your firm regarding the above-referenced matter. We are currently under the duty of diligence before the USPTO in this petition matter under rule 37 C.F.R. 1.378(b).

Accordingly, we need any and all information related to Application No. 09/198,087, U.S. Patent No. 6,066,160, Re-Examination 90/006,460 filed November 25, 2002 and Re-Examination 90/007,085 filed June 30, 2004. In conjunction with these matters, to establish ownership and responsibility for these matters, we also immediately need the following information:

1. Dates Mr. Todd S. Sharinn was employed by Greenburg, Traurig, LLP.
2. Copies of any file engagement agreement/ law firm agreement/ client retainer or fee agreement with Quickie, LLC / Alan Fell / Dr. Colvin / and/or Todd S. Sharinn.
3. Copies of any file transfer letters relating to the above-referenced matters, including but not limited to, transfer to or from Todd S. Sharinn's personal law firm or individually to Greenburg Traurig, transfer to or from Thelen, Reid & Priest from Greenburg Traurig or any other law firm or corporate entity or party.
4. Copies of any docketing records relating to any of the above-referenced matters that were maintained on Greenburg's docketing system at any time.
5. Copies of any correspondence related to the handling or transfer of Quickie, LLC's/ Alan Fell's/ Dr. Colvin's patent, or any other relevant documents or records that you could provide regarding this matter, we would greatly appreciate it.

October 17, 2006

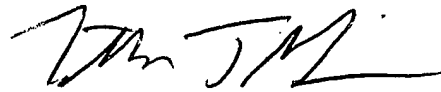
Page 2

If you intend to be of assistance in this matter, please contact us by October 20, 2006.

If you have any questions or need clarification regarding the information I am requesting please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com). We greatly appreciate any information, data or records that you may be able to provide to us to comply with our diligence requirements.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in black ink, appearing to read 'TJM' followed by a stylized flourish.

Timothy J. Maier
Reg. No. 51986

TJM:cjm:

Enclosure(s):Sept. 26, 2006 letter

MAIER & MAIER, PLLC
INTELLECTUAL PROPERTY LAW
128 NORTH PITT STREET, SECOND FLOOR
ALEXANDRIA, VIRGINIA USA 22314
(703) 740-8322
FAX: (703) 991-7071
e-mail: info@maierandmaier.com
web: www.maierandmaier.com

October 23, 2006

Dennis C. Fleischmann
Bryan Cave LLP
1290 Avenue of the Americas
New York, NY 10104-3300

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Quickie, LLC / Dr. Stephen Colvin

Dear Mr. Fleischmann:

We are currently under the duty of diligence before the USPTO a petition matter under rule 37 C.F.R. 1.378(b) for the above-referenced matter.

Accordingly, we need any and all information related to Application No. 09/198,087, U.S. Patent No. 6,066,160, Re-Examination 90/006,460 filed November 25, 2002 and Re-Examination 90/007,085 filed June 30, 2004. In conjunction with these matters, to establish ownership and responsibility for these matters, we also immediately need the following information:

1. Dates Mr. Todd S. Sharinn was employed by Bryan Cave, LLP.
2. Copies of any file engagement agreement/ law firm agreement/ client retainer or fee agreement with Quickie, LLC / Alan Fell / Dr. Colvin / and/or Todd S. Sharinn.
3. Copies of any file transfer letters relating to the above-referenced matters, including but not limited to, transfer to or from Todd S. Sharinn's personal law firm or individually to Greenburg Traurig, transfer to or from Thelen, Reid & Priest from Greenburg Traurig or any other law firm or corporate entity or party.
4. Copies of any docketing records relating to any of the above-referenced matters that were maintained on Greenburg's docketing system at any time.

5. Copies of any correspondence related to the handling or transfer of Quickie, LLC's/ Alan Fell's/ Dr. Colvin's patent, or any other relevant documents or records that you could provide regarding this matter, we would greatly appreciate it.

If you intend to be of assistance in this matter, please contact us by **October 27, 2006**.

If you have any questions or need clarification regarding the information I am requesting please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com). We greatly appreciate any information, data or records that you may be able to provide to us to comply with our diligence requirements.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in dark ink, appearing to read 'TJM', is written over a horizontal line.

Timothy J. Maier
Reg. No. 51986

Timothy J. Maier

From: "Haracz, Stephen M." <smharacz@BryanCave.com>
To: "Timothy J. Maier" <tjm@maierandmaier.com>
Cc: "Fleischmann, Dennis C." <dcfleischmann@BryanCave.com>; "Londono, Christina M." <cmlondono@BryanCave.com>
Sent: Tuesday, October 24, 2006 3:20 PM
Subject: RE: US patent 6,066,160 to Colvin et al.

todd sharinn's departure date from bryan cave was 10/29/98.

Stephen M. Haracz, Esq.
BRYAN CAVE LLP
1290 Avenue of the Americas
New York, N.Y. 10104
Phone: 212-541-1271
Fax: 212-541-4630
smharacz@bryancave.com
www.bryancave.com

-----Original Message-----

From: Timothy J. Maier [mailto:tjm@maierandmaier.com]
Sent: Tuesday, October 24, 2006 2:57 PM
To: Haracz, Stephen M.
Cc: Fleischmann, Dennis C.; Londono, Christina M.
Subject: Re: US patent 6,066,160 to Colvin et al.

Dear Colleagues,

Thank you for your response and suggestions. Pepe Hazard and Greenberg Traurig and other individuals and entities have already been contacted regarding this matter.

It is our understanding that Todd Sharinn was representing the patent owner during a time that he was employed at Bryan Cave on 11/22/02. Please see the attached document. It would be helpful to us to get the dates Todd Sharinn was employed so that we can establish our timeline for this petition.

If you have any questions or concerns, please do not hesitate to contact me.

Best Regards,
Tim Maier

Timothy J. Maier*
Maier & Maier, PLLC
128 North Pitt Street, 2nd Floor
Alexandria, VA 22314

10/24/2006

(Office) 703.740.8322 x101

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www.maierandmaier.com

*Admitted in the Commonwealth of Virginia and registered to practice before the United States Patent Office (PTO).

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----- Original Message -----

From: Haracz, Stephen M.

To: tjm@maierandmaier.com

Cc: [Fleischmann, Dennis C.](#) ; [Londono, Christina M.](#)

Sent: Tuesday, October 24, 2006 1:35 PM

Subject: RE: US patent 6,066,160 to Colvin et al.

dear mr maier:

with regard to your inquiry directed to mr. fleischmann, we have found no record of the patent or underlying application in our docketing system. suggest you contact pepe & hazard or greenberg traurig.

Stephen M. Haracz, Esq.

BRYAN CAVE LLP

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New York, N.Y. 10104

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-----Original Message-----

From: Fleischmann, Dennis C.

Sent: Tuesday, October 24, 2006 8:11 AM

To: Haracz, Stephen M.

Subject: FW: US patent 6,066,160 to Colvin et al.

Importance: High

10/24/2006

Do you know where this should be directed?

-----Original Message-----

From: Timothy J. Maier [mailto:tjm@maierandmaier.com]

Sent: Monday, October 23, 2006 6:34 PM

To: Fleischmann, Dennis C.

Subject: US patent 6,066,160 to Colvin et al.

Importance: High

Dear Mr. Fleischmann,

Please see a copy of the attached correspondence. If you have any questions or concerns, please do not hesitate to contact me.

Best Regards,
Tim Maier

Timothy J. Maier*
Maier & Maier, PLLC
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10/24/2006

Timothy J. Maier

From: "Haracz, Stephen M." <smharacz@BryanCave.com>
To: <tjm@maierandmaier.com>
Cc: "Fleischmann, Dennis C." <dcfleischmann@BryanCave.com>; "Londono, Christina M." <cmlondono@BryanCave.com>
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Stephen M. Haracz, Esq.
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10/24/2006

Best Regards,
Tim Maier

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October 26, 2006

Sheila P. Klapatch
Pepe & Hazard LLP
225 Asylum St.
Hartford, CT 06103

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Quickie, LLC

Dear Ms. Klapatch or To whom it may Concern:

Further to our letter dated October 17, 2006, a more complete investigation into this matter shows that under 37 C.F.R. 1.36 and 1.363 Pepe & Hazard LLP still shows up (per the USPTO Website) as the "Fee Address" for payment of maintenance fees.

More specifically, the law firm of Thelen, Reid & Priest LLP has indicated to us that they are not the responsible party for payment of the maintenance fees. Their position is that they only have power of attorney for the Re-examination proceedings for the above-referenced patent. Further, their position is that we should look to Pepe & Hazard LLP for failure to pay the above-referenced maintenance fees. Likewise, we currently believe that Pepe & Hazard LLP may still have some responsibility for this matter.

Please provide us any additional documentation that may indicate that Pepe & Hazard, LLP is not responsible for payment of the maintenance fees in contrast to what is shown on the USPTO website. We look forward to your response. We may be in touch in the future should we require any assistance.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC



Timothy J. Maier
Reg. No. 51986

TJM:cjm:
Enclosure(s):

MAIER & MAIER, PLLC
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Sent via Email and Courier

October 26, 2006

Mr. Robert M. Blum
Thelen Reid & Priest LLP
101 Second Street
Suite 1800
San Francisco, CA 94105

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

RE: U.S. Patent No. 6,066,160 of Quickie, LLC, Dr. Stephen Colvin

Dear Mr. Blum:

Further to our letters of September 26, 2006 and October 17, 2006 to Mr. Robert Krebs, we have received no direct correspondence from your firm regarding the above-referenced matter. We are currently under the duty of diligence before the USPTO in this petition matter under rule 37 C.F.R. 1.378(b).

Accordingly, we need any and all information related to Application No. 09/198,087, U.S. Patent No. 6,066,160, Re-Examination 90/006,460 filed November 25, 2002, and Re-Examination 90/007,085 filed June 30, 2004. In addition, to establish ownership and responsibility for these matters, we also immediately need the following information:

1. Copies of any file engagement agreement/ law firm agreement/ client retainer or fee agreement with Quickie, LLC / Alan Fell / Dr. Colvin / and/or Todd S. Sharinn, Greenburg Traurig, LLP, or Medtronic Inc.
2. Copies of any file transfer letters relating to the above-referenced matters, including but not limited to, transfer to or from Todd S. Sharinn's personal law firm or individually, to or from Greenburg Traurig LLP, or any other law firm or corporate entity or party.
3. Copies of any docketing records relating to any of the above-referenced matters that were maintained on Greenburg's docketing system at any time.

4. Copies of any correspondence related to the handling or transfer of Quickie, LLC's/ Alan Fell's/ Dr. Colvin's patent, or any other relevant documents or records that you could provide regarding this matter.

5.

We are aware that your firm **filed and prosecuted** for the subject patent Re-Examination 90/007,085 which was merged with a prior filed Re-Examination 90/006,460, during the two-year window for timely filing a 37 C.F.R. 1.378 (c) unintentional petition. Additionally, we have carefully reviewed the power of attorney and change of correspondence address your firm filed in this case, and USPTO rules 1.36, 1.363 and 1.33 governing these matters.

Please do not hesitate to contact me via phone (703 740-8322 x101) or email (tjm@maierandmaier.com) if you would like to discuss this matter with me. We greatly appreciate any information, data or records that you may be able to provide to us to assist in establishing our timeline for the above-referenced petition.

With best regards,

Very truly yours,
MAIER & MAIER, PLLC

A handwritten signature in black ink, appearing to read 'TJM' followed by a stylized flourish.

Timothy J. Maier
Reg. No. 51,986

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